COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 2020-P-0707

Land Court

Ellen Rosenfeld, as Trustee of The Ellen Realty Trust and CommCan, Inc.,

Appellees

V.

Town of Mansfield, Massachusetts,

Appellant

On Appeal From a Judgement and Order in the Land Court

APPELLANT'S BRIEF

Date: August 10, 2020

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STATEMENT OF THE ISSUE

Whether the Land Court erred as a matter of law on this one count G.L. c. 240, §14A Complaint when it entered Judgment for the plaintiffs after allowing their Motion for Summary Judgment despite the fact that: (1)not every "claim" under G.L. c. 240, §14A is cognizable; (2)CommCan is not a landowner (and thus has no viable claim under G.L. c. 240, §14A); (3)Rosenfeld has no license, provisional or otherwise, to sell marijuana in Mansfield; (4)the zoning bylaw at issue (that allows for the location of a "Recreational" or "Adult Use" Marijuana facility in the town) has no direct affect upon either plaintiff, as required under G.L. c. 240, §14A; (5)the Special Permit issued which allows for the medical marijuana facility applied for was allowed in 2016 and the plaintiffs have not located any facility at the property; (6)neither one of the plaintiffs are

actually "engaged in" the sale of marijuana in Mansfield; (7)the zoning bylaws under which Rosenfeld applied for and received a special permit in 2016 do not allow for the location of a "Recreational Marijuana" facility at 611 West Street; and, (8)the statutes at issue, G.L. c. 40A, §3 and G.L. c. 94G, §3 simply do not require it, according to the recognized rules of statutory construction.

STATEMENT OF THE CASE

The Complaint was filed in the Land Court on July 18, 2019; see the Docket Sheet in the Record Appendix filed herewith ("R.A.") pp. 3-6. It named Ellen Rosenfeld, as Trustee of The Ellen Realty Trust ("Rosenfeld") and "CommCan, Inc." ("CommCan") as plaintiffs, and it consisted of one count allegedly filed pursuant to G.L. c. 240, §14A, in which the plaintiffs claimed that the "Provisional Registration"[1] for medical marijuana received by CommCan from the Cannabis Control Commission on July 12, 2016 prevents the Town of Mansfield from precluding an automatic

[1] Which, according to 935 CMR 500.002 simply means "a License issued by the Commission confirming that a Marijuana Establishment has completed the application process and satisfied the qualifications for initial licensure"; see 935 CMR 500.002.

conversion of that not yet established facility medical marijuana facility to a Recreational Marijuana facility; see R.A., pp. 7-30[2].

The Complaint was served upon the Town of Mansfield (the "town"), the only named defendant; see R.A., p. 5. The town filed it Answer to the Complaint on August 16, 2019; see R.A., p. 5 and pp. 31-61.

The parties were notified of a Case Management Conference that was scheduled and which took place on September 17, 2019; see R.A., p. 5. In connection with that Case Management Conference on September 13, 2019 the parties filed a Joint Case Management Conference Statement setting forth their legal positions regarding the dispute; see R.A., p. 5 and pp. 62-71.

As set forth both in its Answer to the Complaint and in the Case Management Statement[3], the town asserted, among other things, that the Complaint failed to set forth any cognizable claim pursuant to

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[2] The actual verbiage from the Complaint concerning the Order that the plaintiffs sought reads as follows: "that town is not permitted to enact zoning bylaws that operate to prevent the conversion of a [Registered Marijuana Dispensary] registered not later than July 1, 2017, and thus, said conversion is allowed by right"; see R.A., p. 8.

[3] See R.A., pp. 42-43, pp. 63-65,and pp. 68-69.

G.L. c. 240, §14A, as a matter of law. As shown by the agreed facts, the relevant zoning amendment[4] has no application to the plaintiff Rosenfeld's property which is not located within the zone subject to the zoning amendment that simply allows for recreational[5] marijuana sales within a certain zoning district of the town. That amendment has no 'direct effect' upon either plaintiff[6]. That is all[7]. Therefore, in accordance with G.L. c. 240, §14A and G.L. c. 185, §1(j½) there is, and was, no jurisdiction in the Land Court to opine, as the plaintiffs suggested[8] and the

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[4] Which was approved by the Attorney General's Office and which allows for a recreational marijuana facility in a different part of Mansfield; see R.A., pp. 118-123.

[5] Which the plaintiffs refer to as "adult use retail marijuana" in their pleadings.

[6] Rosenfeld, (not CommCann), purchased the property in 2018; CommCann (not Rosenfeld) has a Provisional Certificate of Registration for medical marijuana. It is axiomatic that each plaintiff must have the requisite standing; it cannot be secured cumulatively as a result of each plaintiff's circumstances.

[7] The amended zoning bylaw does not apply to the 611 West Street parcel. It has no 'direct effect' on the plaintiff landowner- a requirement for pursuing any viable complaint under G.L. c. 240, §14A; Hansen & Donahue, Inc. v. Town of Norwood, 61 Mass. App. Ct. 292 (2004). Moreover, there has been no rezoning of the Rosenfeld land and potential business competition does not provide the requisite standing required to pursue any viable claim under the statute.

[8] What the plaintiffs actually appear to be "complaining" about is the possible loss of sales because, it is reasonable to infer, a Recreational

court erred in so doing. The result of the legal analysis indicated, contrary to the outcome reached, that the Complaint ought to have been dismissed; see R.A., pp. 42-43, 63-65, 130-133, 134-138, and 139-148.

On December 30, 2019 Rosenfeld and CommCan filed a Motion for Summary Judgment, a Land Court Rule 4 Statement of Material Facts in support of the Plaintiffs' Motion for Summary Judgment, and an Appendix; see R.A., pp. 72-73, 74-77, and 78-128, respectively. On January 29, 2020 the town filed its Opposition to the Plaintiffs' Motion for Summary Judgment along with its request for disposition pursuant to Massachusetts Rules of Civil Procedure 56(b) and 56(c), its "Response to the 'Statement of Undisputed Material Facts' submitted by the plaintiffs and the town's Statement of Additional Undisputed Facts"[9], and the Town of Mansfield's Appendix; see R.A., pp. 129-132, 133-137, 138-147, respectively.

Marijuana facility as allowed in the zoning amendment might have a negative impact on the plaintiffs' sales. That claim however does not form the proper basis of any G.L. c. 240, §14A claim. Thus there is no standing, no claim under G.L. c. 240, §14A and no jurisdiction pursuant to G.L. c. 185, §1(j½) and Massachusetts Rule of Civil Procedure 12(b)(1), as a matter of law.

[9] To which the plaintiffs did not respond and thus those facts were deemed admitted, pursuant to Land

Oral argument took place on the plaintiffs' dispositive motion and the town's opposition and its request for disposition on March 5, 2020; see R.A., p. 5. On April 8, 2020 the Land Court, Speicher, J., issued its Decision on the Plaintiffs' Motion for Summary Judgment[10] along with a Judgment which entered for the plaintiffs on April 8, 2020; see R.A., pp. 148-159 and 160-161, respectively. It is from that decision and the Judgement entered that the town filed its appeal.

STATEMENT OF THE FACTS

In summary fashion[11], the facts are these: In 2016 the town's Planning Board issued a Special Permit to Rosenfeld in order to operate as a nonprofit[12] for the

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Court Rule 4; see Addendum, pp. 81-82 for text of Rule 4.

[10] On appeal the Court reviews the allowance of summary judgment *de novo*; Targas Group Intl., Inc. v. Sherman, 76 Mass. App. Ct. 421, 428 (2010); "[t]he test is whether the evidence, viewed in the light most favorable to the losing party, establishes all material facts and entitles the successful party to a judgement as a matter of law"; Id.

[11] See also "The Statement of Undisputed Facts" and the town's responses to those facts, together with "The Town of Mansfield's Statement of Additional Undisputed Facts", in the R.A., at pp. 74-77 and 133-137.

[12] The plaintiffs are no longer operating as a nonprofit organization, according to the sworn testimony of Ellen Rosenfeld at the Superior Court trial of "West Street Associates LLC v. Mansfield ZBA and Ellen Rosenfeld Trustee of the Ellen Realty Trust,

dispensing of medical marijuana[13] at 611 West Street (the "property"), which neither plaintiff owned at the time; see R.A., pp. 74, 80-81 and 105-111. The town's Zoning Bylaws allow for such a medical marijuana facility; see R.A., p. 75 and pp. 91-93. Thus in 2016 Rosenfeld applied for, and was granted a Special Permit, pursuant to Section 230-3.4 (K) of the town's zoning bylaws, as a nonprofit seeking to dispense medical marijuana at the property, as a community service to fill a medical need; see R.A., pp. 75, 133-134, and 105-111[14].

The property at 611 West Street was vacant land at the time of the grant of the Special Permit in

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Bristol Superior Court C.A. # 1773-CV-00009, and "West Street Associates LLC v. Mansfield Planning Board ZBA, Ellen Rosenfeld Trustee of the Ellen Realty Trust, Bristol Superior Court C.A. # 1773-CV-00008", that took place on November 25, 2019 and November 26, 2019; see R.A., pp. 74 and 137.

[13] In that regard, according to the Decision of the Planning Board (which commemorates the grant of the applicant's request for the issuance of a Special Permit to establish a medical marijuana facility), five of the board members specifically referred to the service provided and the medical aspect of the proposal for issuance of a special permit in support of their votes to grant the special permit applied for; see R.A., pp. 105-111 and 137.

[14] See esp. pp. 109-110 therein.

2016, and it is still vacant now[15]; see R.A., pp. 110 and 136.

Section 230-3.4(K)(3)(a)-(b) of the town's zoning bylaws provides that the Planning Board, acting as the Special Permit Granting Authority, may grant a special permit for a registered nonprofit medical marijuana dispensary *only* in the "Planned Business District"; see R.A., p. 92. The subject property is located in that district; it is not located in the district that allows, since April 10, 2018[16], for the sale of recreational marijuana; see R.A., pp. 74-76, 91-98 and 133-135.

The zoning bylaw also provides that "[r]egistered nonprofit medical marijuana dispensaries shall be prohibited in all other zoning districts"; see R.A., p. 92. The public is entitled to notification of the

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[15] It appears by its Decision that the trial court misunderstood the town's argument concerning the undeveloped status of the property. That point was argued as illustrative of the fact that the plaintiffs are not "engaged in" marijuana sales on the premises. In that regard the town takes no issue with the definition of "'engaged' in an activity is to be 'involved in activity; occupied; busy'", as set forth in the trial court's Decision at page 10. This definition however supports rather than detracts from the town's argument concerning the statute.

[16] Which is more than four months *before* Rosenfeld purchased the West Street property; see R.A., pp. 80-81.

hearing held by the board on any application for a special permit and the subject zoning bylaws provide that all such applications are subject to filing and notice requirements under G.L. c. 40A, §11; see R.A., p. 92 at Section 230-3.4(K)(3)(d). This is because the statute recognizes that such individuals are "interested parties" entitled to such notification; see R.A., p. 92.

Section 230-3.4(K)(4)(a) of the zoning bylaws provides that such not for profit medical marijuana special permits are non-transferable, and Section 230-3.4(K)(4)(b) provides that "[s]pecial permits granted under this section shall lapse within two years unless substantial use of the permit is made or construction has commenced"; see R.A., p. 92. While an abutter appealed from the grant of that special permit, as a matter of law Rosenfeld could have gone forward on that special permit[17] and located a medical marijuana facility on the premises; she chose not to; see R.A., p. 137.

Section 230-3.4(M) of the zoning bylaws allows for certain activities associated with recreational

[17] Pursuant to G.L. c. 40A, §11.

marijuana use in the town; see R.A., p. 98. That bylaw allows for "[t]he manufacturing, independent laboratory testing or research of recreational marijuana" via a special permit from the Planning Board "in the I-2 Zoning District"; see Section 230-3.4(M)(1)(a) of the zoning bylaws at R.A. p. 98.

The purpose of the bylaw, as set forth in Section 230-3.4 (M)(1)(b) "is to establish a local process for the locating, permitting and regulation of marijuana manufacturing, independent laboratory testing or research for marijuana, in accordance with M.G.L. c. 64N and M.G.L. c. 94G; to protect the health, safety and general welfare of the inhabitants of the Town of Mansfield; and to properly locate the subject uses in order that the uses have the minimal possible exposure to Mansfield's children and impact on housing values, and to provide a destination location that is consistent with other allowed activities in the I-2 Zoning District"; see R.A., p. 98.

The zoning bylaws allow an applicant to seek a special permit in order to manufacture marijuana, and/or test or conduct research on marijuana, and only if such use is proposed to be carried out completely within the confines of a building on a lot that has a

minimum size of four acres[18]; see R.A., pp. 98-100 for zoning bylaw Sections 230-3.4(M)(3)(c) and (d). Finally, Section 230-3.4(M)(9) of the zoning bylaws provides for a mandatory Host Community Agreement in connection with any marijuana sales within the town; see R.A., p. 103.

ARGUMENT

This Complaint consists of a single count allegedly sounding under G.L. c. 240, §14A in which the plaintiffs assert that a "Provisional Registration[19]" received by CommCan on July 12, 2016 and a Special Permit that followed allowing for the establishment of a not for profit "Medical Marijuana" facility to be located at 611 West Street, allows them, as a matter of law, to convert that facility into a "Recreational Marijuana" facility, due, they

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[18] Which the lot at 611 West Street does not have; see R.A., pp. 105 and 80-81.

[19] For its proposed medical marijuana dispensary in Mansfield which registration simply allowed Rosenfeld "to move forward to the Inspectional Phase" of that process at the DPH; see R.A., p. 86. That provisional registration can be revoked at any time and it provides, among other things, that Rosenfeld, like any holder of such a provisional registration, "shall be subject to inspection and audit to ascertain that its facilities are compliant with all applicable state and local codes, bylaws, ordinances and regulations"; see R.A., pp. 86-87.

suggest to the promulgation in 2017 of G.L. c. 94G. By way of "relief" Rosenfeld and CommCan suggested that they are entitled to an Order from the Court declaring that "that town is not permitted to enact zoning bylaws that operate to prevent the conversion of a RMD[20] registered not later than July 1, 2017, and thus, said conversion is allowed by right"; see R.A., p. 8. The plaintiffs were, and still are, wrong.

The town denies the viability of the plaintiffs' claims, and it states, in summary fashion, that: (1) not every "claim" under G.L. c. 240, §14A is cognizable[21]; (2) the plaintiffs are not affected by a 2018 zoning bylaw change that allows for the location of a "Recreational" or "Adult Use" Marijuana facility in the town; (3) the Special Permit that allows for the medical marijuana facility applied for was allowed in 2016 and the plaintiffs have not located any facility at the property; (4) the zoning bylaws under which Rosenfeld applied for and received a special

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[20] A.k.a. as a "Registered Marijuana Dispensary"; in that regard CommCan has only a Provisional Certificate of Registration; see R.A., pp. 86-88.

[21] See Balcam v. Hingham, 41 Mass. App. Ct. 260, 267 (1996) (there are only a "narrow range of cases involving the 'validity and extent' of zoning bylaws where an appeal can be taken under G.L. c. 240, §14A without exhausting administrative remedies").

permit do not allow for the location of a "Recreational Marijuana" facility at 611 West Street; and, (5) the statutes at issue, G.L. c. 40A, §3 and G.L. c. 94G, §3, neither require, nor allow it.

The instant Complaint failed to set forth any claim pursuant to G.L. c. 240, §14A, as a matter of law. The subject zoning amendment[22] has no application to the plaintiff Rosenfeld's property which is not located within the zone subject to the amendment that simply allows for recreational[23] marijuana sales within a certain zoning district of the town. That is all. This is not a case seeking to "resolve doubts relating to by-law restrictions or the requirements of a zoning ordinance"[24]; it is not a cognizable claim under G.L. c. 240, §14A as a matter of law and it should have been dismissed after the entry of Judgement for the town. In failing to do that the trial court erred.

G.L. c. 240, §14A is not a catch all for all legal inquiries concerning zoning; it does in fact have jurisdictional limitations, and the amended

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[22] Which was approved by the Attorney General's Office.
[23] Which the plaintiffs refer to as "adult use retail marijuana" in their pleadings.
[24] See Whitinsville Retirement Society, Inc. v. Northbridge, 394 Mass. 757, 762-63 (1985).

zoning bylaw has, among other things, no direct effect upon, nor does it apply to the 611 West Street parcel. The *gravamen* of the plaintiffs' Complaint is that because they already have a Special Permit they are allowed to covert that permitted medical marijuana use to one that allows for the sale of recreational marijuana at the site, by virtue of their interpretation of the 'grandfathering' effect of G.L. c. 94G, §3.

As an initial matter it bears noting that the plaintiffs have the burden of demonstrating that they have the requisite "standing" to pursue any claim under G.L. c. 240, §14A; Hanna v. Framingham, 60 Mass. App. Ct. 420, 422 (2004). It is "an essential prerequisite to judicial review"; Hanna, 60 Mass. App. Ct. at 422 and cases cited. This is a burden that neither CommCan nor Rosenfeld can or did bear, as a matter of law.

As noted above, G.L. c. 240, §14A is limited in scope. It provides-

> The owner of a freehold estate in possession in land may bring a petition in the land court against a city or town wherein such land is situated, which shall not be open to objection on the ground that a mere judgment, order or decree is sought, for determination as to the validity of a

> municipal ordinance, by-law or regulation, passed or adopted under the provisions of chapter forty A or under any special law relating to zoning, so called, which purports to restrict or limit the present or future use, enjoyment, improvement or development of such land, or any part thereof, or of present or future structures thereon, including alterations or repairs, or for determination of the extent to which any such municipal ordinance, by-law or regulation affects a proposed use, enjoyment, improvement or development of such land by the erection, alteration or repair of structures thereon or otherwise as set forth in such petition. The right to file and prosecute such a petition shall not be affected by the fact that no permit or license to erect structures or to alter, improve or repair existing structures on such land has been applied for, nor by the fact that no architects' plans or drawings for such erection, alteration, improvement or repair have been prepared. The court may make binding determinations of right interpreting such ordinances, by-laws or regulations whether any consequential judgment or relief is or could be claimed or not.

G.L. c. 240, §14A (1977). Under that statute, "the evil to be remedied is a situation where someone may be forced to invest in land before being able to find out whether there are restrictions"; Whitinsville Retirement Society, 394 Mass. at 763 citing to Harrison v. Braintree, 355 Mass. 651, 654 (1969). That is not the case here.

"It is well settled that Section 14A authorizes a petition by a landowner on whose land there is a

direct effect of the zoning enactment through the permitted use of another's land"; Santullo v. City of Woburn, 9 LCR 342, 343 (2001) citing to Harrison, 355 Mass. at 655 (1969) ("the primary purpose of proceedings under Section 14A is to determine how and with what rights and limitations the land of the person seeking an adjudication may be used under the provisions of a zoning enactment in terms applicable to it, particularly where there is no controversy and hence no basis for declaratory relief"). "In such a case, the landowner's right to pursue a court determination is grounded in its proof that the enactment will have a negative effect on the continued "'use, enjoyment, improvement or development' of the landowner's property for the purpose for which it is zoned"; Id. Those are not the facts here.

"Under G.L. c. 240, §14A, a landowner may petition the Land Court for a decision 'concerning the validity or invalidity of any zoning restriction applicable to his land'"; Mastriani v. Building Inspector of Monson, 19 Mass. App. Ct. 989, 990 (1985) ("a landowner may bring an action under §14A for determination of the validity of a zoning enactment regulating land owned by another, if the use of such

land pursuant to the zoning amendment 'directly and adversely affects the permitted use of his land'") citing to Sturges v. Chilmark, 380 Mass. 246, 249 (1980) and Banquer Realty Co. v. Acting Bldg. Commr. of Boston, 389 Mass. 565, 570 (1983). Here, the zoning amendment has no such effect.

The property owned by Rosenfeld at 611 West Street, Mansfield MA is not within the Retail Recreational Marijuana Overlay zoning district of the town. The bylaw about which the plaintiffs appear to protest is the amended zoning bylaw that allows, upon the issuance of a Special Permit pursuant to the zoning bylaws, for the siting of a Recreational Marijuana facility in that zone. It does not affect at all the zoning district in which the Rosenfeld property is located, and there is no evidence that the plaintiffs are currently engaged in the sale of medical marijuana on the property, that their "Provisional Certificate of Registration" has been modified to allow for any such recreational marijuana sales in Mansfield, or that they have been directly affected by the recreational marijuana zoning bylaw at all.

Here, the plaintiffs could have proceeded on their Special Permit in the zoning district in which Rosenfeld's property is located as they could have since that Special Permit was granted in 2016; the zoning bylaw that allows for the sale of recreational marijuana has nothing to do with that. Thus, the instant Complaint fails to set forth a cognizable claim as a matter of law, pursuant to G.L. c. 240, §14A[25].

In accordance with G.L. c. 240, §14A and G.L. c. 185, §1(j½) there was no jurisdiction in the trial court to opine as the plaintiffs suggested. There is no standing, no claim under G.L. c. 240, §14A, no jurisdiction pursuant to G.L. c. 185, §1(j½) and Massachusetts Rule of Civil Procedure 12(b)(1)[26], and

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[25] According to their own pleadings Rosenfeld is the owner of the property at 611 West Street. In that regard it is important to note that the entity referred to in the plaintiffs' pleadings as "CommCan" is actually an entity known as "Commonwealth Cannabis"; it is not an "owner of a freehold estate in possession of land" here and thus it cannot seek 'relief' at all pursuant to G.L. c. 240, §14A, as a matter of law it has no 'standing' to do so.

[26] For lack of jurisdiction, as set forth in the town's Answer to the Complaint, the Case Management Conference Statement and the case law which stands for the proposition that lack of jurisdiction is an available defense at any time during the proceedings and it cannot as a matter of law be waived.

the case should have been dismissed, as a matter of law pursuant to Massachusetts Rule of Civil Procedure 12(b)(1).

What actually happened here is that CommCan-*the party here that has no standing under G.L. c. 240, §14A as a matter of law*[27]- sought to negotiate a new Host Community Agreement with the town. In addition to the fact that it was the Host Community Agreement between CommCan and the town which led to CommCann's request for a meeting with the Board of Selectmen to negotiate a new Host Community Agreement (and the correspondence to the plaintiffs' counsel in response), that apparently led to the instant litigation, a Host Community Agreement is required as part of the Application of Intent packet filed with the Cannabis Control Commission for a license, as set forth in the regulations at 935 CMR §500.001, et seq.; see Addendum at pp. 83-109.

Those regulations require a certification signed by a municipality evidencing that the applicant and the host municipality have executed a Host Community Agreement; see 935 CMR §500.101(1). While the

[27] See n. 6, *supra*.

statute, G.L. c. 94G, grants to the Cannabis Control Commission the sole authority to decide which applicants to award licenses, it cannot consider any applicant that has not executed a Host Community Agreement with a municipality; see generally G.L. c. 94G, §5(b). Moreover, both the statute and the regulations leave the substantive issues related to the time, place, and manner of such operations to the local authorities; see 935 CMR 500.101.

The Host Community Agreement[28] entered into by the town and CommCan was for Medical Marijuana only, it was not for the sale or distribution of recreational marijuana and/or recreational marijuana products. The Host Community Agreement specifically states, among other things, that

> **"[t]his Agreement applies solely to the operations of the RMD dispensing facility within the Town, in accordance with the DPH Certificate of Registration, specifically for the purpose of**

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[28] A copy of which was attached both to the Answer filed and within "The Town of Mansfield's Appendix" as Item No. 1; see R.A., pp. 45-53 and pp. 138-147. It is that Host Community Agreement which forms the actual basis of the plaintiffs' claims as they complained that the town would not enter into negotiations for a new Host Community Agreement; see para. nos. 16-17 of the Complaint at R.A., p. 10. First, the town does not have to renegotiate its Host Community Agreement and second such a 'grievance' does not set forth a viable basis for any claim under G.L. c. 240, §14A.

> **dispensing marijuana for medical use. If, during the term of this Agreement, it becomes permissible under Massachusetts law for the Company to sell or distribute marijuana for any other purpose than initially authorized by the DPH Certificate of Registration this Agreement shall not authorize the Company to sell or distribute marijuana for any other purpose than initially authorized by the DPH Certificate of Registration";**

see a copy of that Host Community Agreement (emphasis added) at R.A. pp. 139-147.

Here, CommCan, Inc.[29] has a Provisional Certificate of Registration that was issued in reference to an application for the sale of medical marijuana in Mansfield, not for the sale and/or distribution of recreational marijuana; see R.A., pp. 86-88. However, the plaintiffs are not engaged in medical marijuana operations at 611 West Street, Mansfield, MA; moreover, the scope of their proposed project as well as its effects on the neighborhood were obviously considered not only in agreeing to the terms and signing of the Host Community Agreement, but also the Special Permit allowing for that medical, as opposed to recreational, marijuana use; see R.A., pp. 105-111 and pp. 140-147.

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[29] And *not* Rosenfeld; see R.A., pp. 86-88.

Furthermore, the Host Community Agreement does not allow for the sale and/or distribution of Recreational Marijuana; in fact, it specifically provides that no such operations are allowed under the Host Community Agreement, without which the plaintiffs cannot operate any marijuana facility in the town of Mansfield at all. Simply put, the instant Complaint failed to set forth a cognizable claim as a matter of law and in accordance with G.L. c. 240, §14A, G.L. c. 185, §1(j½) and Massachusetts Rule of Civil Procedure 12(b)(1) this Honorable Court lacked jurisdiction[30] to entertain it.

Perhaps more important, the plaintiffs' statutory argument to the court was both misleading and incorrect. Prior to be rewritten in 2017, after the Host Community Agreement was drafted and signed, but not before there was "talk on the street" about a

[30] See Whitinsville Retirement Society, Inc. v. Town of Northbridge, 394 Mass. 757 (1985) (Land Court lacked jurisdiction under either G.L. c. 240, §14A or c. 185, §1(j½) to entertain a claim which actually sought a determination whether a landowner's proposed use of its property was exempt from the provisions of a town's zoning bylaw by virtue of a certain special permit, since such determination involved the effect of the special permit rather than the validity of the bylaw or the application of the bylaw to its land).

possible change in the statute, G.L. c. 40A, §3 read as follows:

> (a) A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter and that:
>
> (1) govern the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories, except that zoning ordinances or by-laws shall not prohibit placing a marijuana establishment which cultivates, manufactures or sells marijuana or marijuana products in any area in which a medical marijuana treatment center is registered to engage in the same type of activity;

As revised, and effective July 28, 2017, that statute now states:

> (a) A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter and that:
>
> (1) govern the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories, except that zoning ordinances or by-laws shall not operate to: (i) **prevent the conversion of a medical marijuana treatment center licensed or registered not later than July 1, 2017 engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment engaged in the same type of activity under this chapter;** or (ii) limit the number of marijuana establishments

> below the limits established pursuant to clause (2); see G.L. c. 40A, §3 (2017).

G.L. c. 94G, §3, the statute upon which the entirety of the plaintiffs' argument rested, mirrors that change; it states in pertinent part-

> (a) A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter and that:
>
> (1) govern the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories, except that zoning ordinances or by-laws shall not operate to: (i) prevent the conversion of a medical marijuana treatment center licensed or registered not later than July 1, 2017 engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment engaged in the same type of activity under this chapter; or (ii) limit the number of marijuana establishments below the limits established pursuant to clause (2)…;

see G.L. c. 94G, §3 (2018).

As noted, the verbiage of the relevant statutes changed in 2017 from "registered to engage in" **to *actually being* "engaged in cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment engaged in the same type of activity under this chapter"** Here the plaintiffs are not so engaged. They are not actively involved in anything at the site.

In their moving papers at the trial court the plaintiffs did not disclose or even address the change in the statutory language. Instead they completely misinterpreted the statutory language to suggest that as long as one of the plaintiffs are engaged absolutely *anywhere* in the cultivation, manufacture or sale of marijuana or marijuana products that the Court must find as a matter of law that they have an automatic right under G.L. c. 94G to convert a medical marijuana Special Permit use to a non-permitted recreational marijuana facility, failing as they do to account for the legislative change in the statute.

In that regard, the Court must construe statutes as they are written; Pielech v. Massasoit Greyhound, Inc., 423 Mass. 534; cert. den. 117 S. Ct. 1280 (1996). A statute is to be construed as written, in keeping with its plain meaning; Stop & Shop Supermarket Co. v. Urstadt Biddle Properties, Inc., 433 Mass. 285 (2001); Town of Canton v. Commissioner of Massachusetts Highway Dept., 455 Mass. 783 (2010).

"Engaged in" means just that; it does not mean thinking about being engaged in. Nor does it mean trying to engage in. It means *actually engaged in*, as reflected in the 2017 statutory changes.

Nor is the instant statute ambiguous in nature[31], and thus the plaintiffs' theoretical discourse on the legislative intent of the statute or administrative interpretations of same was neither required, nor allowed; Boston Housing Authority v. National Conference of Firemen and Oilers, Local 3, 458 Mass. 155 (2010); Global NAPs, Inc. v. Awiszus, 457 Mass. 489 (2010).

The meaning of a statute must, in the first instance, be sought in the language in which the statute is framed, and if that is plain, the sole function of the courts is to enforce it according to its terms; Com. v. Boe, 456 Mass. 337 (2010); AA Transp. Co., Inc. v. Commissioner of Revenue, 454

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[31] In their moving papers the plaintiffs suggested that if the court determined that the statute is ambiguous we should look to the CCC's "guidance materials"; assuming *arguendo* that those materials support the plaintiffs claim, (a conclusion which is by no means conceded), that suggestion ignores two facts: the statute is not ambiguous, and it is the judiciary which is the final authority on issues of statutory construction and it must reject administrative agency constructions which are contrary to clear congressional intent; see Saysana v. Gillen, 590 F.3d 7 (1st Cir. Mass. 2009). Even assuming that this a proper G.L. c. 240, §14A claim (which it is not), the interpretation of a town's zoning bylaw is a question of law for the court governed by the familiar principles of statutory construction; see Doherty v. Planning Board of Scituate, 467 Mass. 560, 567 (2014).

Mass. 114 (2009). Where the statute is clear, courts interpret it as written; Com. v. Burgess, 450 Mass. 366 (2008). Moreover, a court cannot interpret a statute so as to avoid injustice or hardship if its language is clear and unambiguous and requires a different construction; CFM Buckley/North LLC v. Board of Assessors of Greenfield, 453 Mass.404 (2009).

It should not be forgotten that the statute under which the plaintiffs plead their case was amended in 2017, and the legislature is presumed to intend and understand all the consequences of its actions; Case of Alves, 451 Mass. 171 (2008). It is also presumed to have acted rationally and reasonably (In re Liquidation of American Mut. Liability Ins. Co., 440 Mass. 796 (2004)) and that what it intended is what the words of the statute say; Com. v. Magnus M., 461 Mass. 459 (2012). Moreover, it is presumed to be aware of existing statutes when it amends a statute or enacts a new one; Com. v. Russ R., 433 Mass. 515 (2001).

These rules of statutory construction were improperly ignored by the court; instead of applying those rules it found that the plaintiffs were "engaged in the activities authorized by their provisional

license as they have been 'involved in [the] activity' of, 'occupied' with, and 'busy' with commencing the sale of marijuana-by obtaining a host community agreement[32] and a special permit[33], and by actively opposing the abutter appeal of the grant of their special permit, so as to permit them to proceed with the physical construction of the project[34] and the commencement of sales", and in so doing the court erred.

The plaintiffs however are not engaged in marijuana sales in Mansfield, medical or otherwise, as testified to by Rosenfeld[35]. Thus neither plaintiff

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[32] There is no Host Community Agreement for the sale of recreational marijuana.
[33] There is no Special Permit for the sale of recreational marijuana.
[34] Which they could have done despite any appeal, as set forth in G.L. c. 40A, §11.
[35] See "The Town of Mansfield's Statement of Additional Undisputed Facts", which were deemed admitted and wherein it is established that the plaintiffs chose not to go forward with any construction for the Special Permit granted by the Planning Board in 2016, and that they have not established any facility on the property, according to the sworn testimony of Ellen Rosenfeld at the Superior Court trial of "West Street Associates LLC v. Mansfield ZBA, Ellen Rosenfeld Trustee of the Ellen Realty Trust, Bristol Superior Court C.A. # 1773-CV-00009, and "West Street Associates LLC v. Mansfield Planning Board ZBA, Ellen Rosenfeld Trustee of the Ellen Realty Trust, Bristol Superior Court C.A. # 1773-CV-00008"; see R.A., p. 136. The property at 611 West Street, Mansfield Massachusetts is still a vacant lot, as seen at the

has a "right" to engage in the cultivation, manufacture or sale of recreational marijuana in the town of Mansfield at its 611 West Street location, for which no facility is in operation and which is outside of the district in which such sales would be allowed. The plaintiffs' interpretation of G.L. c. 40A, §3[36] and/or G.L. c. 94G, §3 does not comply with the actual verbiage of those statutes, nor with the requirements of G.L. c. 240, §14A, or for that matter with the Host Community Agreement. The Complaint, which is nothing more than a prohibited preemptive attack on a theoretical use, should have been dismissed.

CONCLUSION

Therefore, as: (1) not every "claim" under G.L. c. 240, §14A is cognizable; (2) the plaintiffs are not affected by a 2018 zoning bylaw change that allows for the location of a "Recreational" or "Adult Use" Marijuana facility in the town; (3) the Special Permit that allows for the medical marijuana facility applied for was allowed in 2016 and the plaintiffs have not located any facility at the property; (4) the zoning

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Site Visit conducted in connection with those Superior Court trials; see R.A., p. 136.

[36] To the extent that they even provided any such argument vis-a vis G.L. c. 40A, §3.

bylaws under which Rosenfeld applied for and received a special permit do not allow for the location of a "Recreational Marijuana" facility at 611 West Street; and, (5) the statutes at issue, G.L. c. 40A, §3 and G.L. c. 94G, §3 simply do not require nor allow it, the plaintiffs' motion should have been denied.

The instant Complaint should have been dismissed after finding for the town on its request for disposition pursuant to Massachusetts Rules of Civil Procedure 56(b) and 56(c) and in accordance with Land Court Rule 4, as a matter of law. In failing to do that the trial court committed an error of law. The Judgement of the lower court ought to be reversed and Judgement should enter for the town, as a matter of law.

Respectfully submitted,

/s/ Kimberly M. Saillant

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Dated: August 10, 2020

ADDENDUM

Addendum Table of Contents

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

BRISTOL, ss.

MISCELLANEOUS CASE
No. 19 MISC 000357 (HPS)

ELLEN ROSENFELD, Trustee of THE ELLEN REALTY TRUST, and COMMCAN, INC.,

Plaintiffs,

v.

THE TOWN OF MANSFIELD, MASSACHUSETTS,

Defendant.

DECISION ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The recent legalization of the sale of marijuana in the Commonwealth pursuant to G. L. c. 94G has inevitably led to disputes in the applicatiou of the new statute. The evideut inteution of the Legislature to enable establishments already lawfully engaged in the dispensation of so-called "medical marijuana" to convert to the sale of "recreational marijuana" without being prohibited from doing so by local zoning laws is the subject of the current dispute. The plaintiffs, the holders of a state-issued provisional license and a locally issued special permit, both for the dispensation of medical marijuana, seek a determination pursuant to G. L. c. 240, § 14A that the town of Mansfield may not use its zoning bylaw to prohibit the conversion of the plaintiffs' licensed medical marijuana facility to one for the general sale of marijuana to adults. The plaintiffs filed a motion for summary judgment, and

the town filed an opposition asking the court to deny the plaintiffs' motion and to instead grant summary judgment to the town. The parties appeared before the court for a hearing on the pending motion on March 5, 2020. For the reasons stated below, the plaintiffs' motion for summary judgment is ALLOWED, and judgment will enter declaring that the town of Mansfield may not use its zoning bylaw to prohibit the sale of marijuana to adults pursuant to G. L. c. 94G at the plaintiffs' property.

FACTS

The following material facts are found in the record for purposes of Mass. R. Civ. P. 56, and are undisputed for the purposes of the pending motions for summary judgment:[1]

1. Plaintiff Ellen Rosenfeld, as Trustee of the Ellen Realty Trust, ("Rosenfeld") is the owner of property at 611 West Street in Mansfield, ("Property") pursnant to a deed recorded with the Bristol County Registry of Deeds in Book 24603, Page 23 on August 7, 2018.[2]

2. CommCan, Inc. is a Massachusetts corporation, incorporated as a non-profit business corporation in 2015, and converted to a for-profit corporation in May, 2018. Ellen Rosenfeld is the president of CommCan.[3]

3. The Property is an unimproved parcel of land, and is located in a Planned Business District Zone under the Mansfield Zoning Bylaw.[4] The dispensing of medical

[1] In addition, the court takes judicial notice of facts concerning the status of the pending related litigation in Snperior Court.
[2] Statement of Material Facts in Snpport of Pl.'s Mot. For Summ. J. ("Pl.'s Facts") § 1; Town of Mansfield's Resp. to the Statement of Undisputed Material Facts submitted by the Pl.s and the Town's Statement of Add'l Undisputed Facts ("Def.'s Facts") § 1.
[3] Pl.'s Facts § 2; Def.'s Facts § 2.
[4] Pl.'s Facts § 4

marijuana is allowed upon the grant of a special permit in the Planned Business District Zone.[5]

4. On July 12, 2016, CommCan was awarded a Provisional Certificate of Registration by the Department of Public Health Medical Use of Marijuana Program, for the conduct of a Registered Marijuana Dispensary ("RMD") for the dispensing of medical marijuana, to be conducted at the Property.[6]

5. On September 23, 2016, CommCan and the town of Mansfield entered into a Host Community Agreement for the operation of an RMD at the Property.

6. On December 14, 2016, pursuant to an application by Rosenfeld and the then-owner of the Property, the Mansfield Planning Board voted to grant a special permit for the construction and operation of a medical marijuana dispensary at the Property.[7] The Planning Board's decision granting the special permit was filed with the Mansfield Town Clerk on December 15, 2016.[8]

7. An abutting landowner appealed the grant of the special permit pursuant to G. L. c. 40A, sec. 17.[9] A trial in that action was conducted on November 26, 2019, and the Superior Court judge issued a decision on January 2, 2020 affirming the Planning Board's grant of the special permit. Judgment entered dismissing the plaintiff's complaint on January 9, 2020. The plaintiff filed an appeal, which remains pending.

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[5] Pl.'s Facts § 9; Def.'s Facts § 9. The parties appear to agree as well that the Property is not within the town's Retail Recreational Marijuana Overlay zoning district, in which the sale of marijuana to adults is allowed; the record is devoid of documentation of the existence of such a district or of its location with respect to the Property.

[6] Pl.'s Facts § 6, App. 2; Def.'s Facts § 6.

[7] Pl.'s Facts § 10, App. 4; Def.'s Facts § 10.

[8] Id.

[9] *West Street Associates LLC v. Mansfield Planning Board*, Bristol Superior Court C. A. No. 1773-CV-00008.

8. CommCan and Rosenfeld have not begun construction of a building at the Property, nor have they otherwise conducted any actual dispensary operations at the Property, because of the pending appeal of the special permit. Even if CommCan wished to commence construction with the appeal pending, it would be unable to obtain construction financing because of the pending appeal.[10]

9. On December 15, 2016, the "Regulation and Taxation of Marijuana Act," (the "Act") was enacted, adding, among other provisions, a new chapter 94G to the General Laws.[11] Following amendments, G. L. c. 94G became effective on July 28, 2017, putting in place a procedure to allow the retail sale of marijuana to adults in Massachusetts.[12]

10. On June 7, 2017, apparently in anticipation of the impending legalization of non-medical sales of marijuana to adults, CommCan's attorney sent a letter to the Mansfield Select Board asking for a meeting to discuss authorization to add adult-use, non-medical sales of marijuana to the facility to be constructed at the Property.[13] In the letter, CommCan asserted that its use of the Property for adult-use sale of marijuana was "grandfathered," notwithstanding that non-medical sale of marijuana to adults was not permitted by the Mansfield Zoning Bylaw in the Planned Business District in which the Property was located.[14]

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[10] Affidavit of Ellen Rosenfeld, February 20, 2020, filed in *West Street Associates LLC v. Mansfield Planning Board*, Bristol Superior Court C. A. No. 1773-CV-00008.
[11] St. 2016, c. 334, § 5.
[12] St. 2017, c. 55, § 20, eff. July 28, 2017.
[13] Pl.'s Facts § 15, App. 5; Def.'s Facts §15.
[14] Id.

11. The Select Board responded, in a letter dated June 24, 2017, that it was not interested in a meeting, and disagreed with the assertion that the proposed use of the Property was "grandfathered."[15]

DISCUSSION

"Summary judgment is granted where there are no issues of genuine material fact, and the moving party is entitled to judgment as a matter of law." *Ng Bros. Constr. v. Cranney*, 436 Mass. 638, 643-644 (2002); Mass. R. Civ. P. 56 (c), as amended, 436 Mass. 1404 (2002). "The moving party bears the burden of affirmatively demonstrating that there is no triable issue of fact." *Ng Bros. Constr. v. Cranney*, supra, 436 Mass. at 644. In determining whether genuine issues of fact exist, the court must draw all inferences from the underlying facts in the light most favorable to the party opposing the motion. See *Attorney Gen. v. Bailey*, 386 Mass. 367, 371, cert. denied, 459 U.S. 970 (1982). Whether a fact is material or not is determined by the substantive law, and "an adverse party may not manufacture disputes by conclusory factual assertions." *Ng Bros. Constr. v. Cranney*, supra, 436 Mass. at 648. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When appropriate, summary judgment may be entered against the moving party and may be limited to certain issues. *Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553 (1976); Mass. R. Civ. P. 56 (c), as amended, 436 Mass. 1404 (2002).

I. THIS MATTER IS PROPERLY BEFORE THE COURT PURSUANT TO G. L. c. 240, § 14A.

The town argued at the hearing of this matter (but not in its written opposition) that the court has no jurisdiction to hear the plaintiffs' complaint pursuant to G. L. c. 240, § 14A

[15] Pl.'s Facts § 16, App. 6; Def.'s Facts §16.

because CommCan, the licensee and operator of the proposed marijuana facility to be operated at the Property, is not the owner of the Property. This argument neglects the fact that the owner of the Property, Ms. Rosenfeld, in her capacity as Trustee of the Ellen Realty Trust, is also a plaintiff. G. L. c. 240, § 14A provides in relevant part,

> [t]he owner of a freehold estate in possession in land may bring a petition in the land court against a city or town wherein such land is situated, which shall not be open to objection on the ground that a mere judgment, order or decree is sought, for determination as to the validity of a municipal ordinance, by-law or regulation, passed or adopted under the provisions of chapter forty A or under any special law relating to zoning, so called, which purports to restrict or limit the present or future use, enjoyment, improvement or development of such land, or any part thereof, or of present or future structures thereon, including alterations or repairs, or for determination of the extent to which any such municipal ordinance, by-law or regulation affects a proposed use, enjoyment, improvement or development of such land by the erection, alteration or repair of structures thereon or otherwise as set forth in such petition. . . . The court may make binding determinations of right interpreting such ordinances, by-laws or regulations whether any consequential judgment or relief is or could be claimed or not.

Accordingly, G. L. c. 240, §14A permits "the owner of a freehold estate" to obtain a judgment from the Land Court as to the validity of a municipal zoning ordinance or bylaw, or as to the extent to which the land of the owner is affected by the application of a bylaw to a proposed use or development of such land. This is exactly the relief sought by Rosenfeld, who, as owner of the Property, is entitled to a "binding determination" of the extent to which the town may invoke its zoning bylaw to prohibit the proposed use of the Property for sale of marijuana to adults, notwithstanding the prohibition against such use in the zoning district in which the Property is located.

The present complaint violates neither the prohibition against the use of the statute to avoid exhaustion of administrative remedies, *Whitinsville Retirement Society, Inc. v. Town of Northbridge*, 394 Mass. 757, 762-763 (1985), nor the prohibition against litigation of merely hypothetical claims. *Hansen & Donahue, Inc. v. Town of Norwood*, 61 Mass. App. Ct. 292, 296 (2004). Like the plaintiff in *Gamsey v. Building Inspector of Chatham*, who sought a determination of the validity of a zoning requirement for a special permit in order to convert rental units to condominium units, the plaintiff here is not required to exhaust administrative remedies, because she seeks a determination with respect to the validity of the prohibition of a specific use by the zoning bylaw as applied to her property. 28 Mass. App. Ct. 614, 616 (1990).

II. THE TOWN MAY NOT USE ITS ZONING BYLAW TO PROHIBIT THE SALE OF MARIJUANA PURSUANT TO G. L. c. 94G AT THE PROPERTY.

The nub of the dispute between the parties is their disagreement whether CommCan is "engaged" in the cultivation or sale of medical marijnana so as to come within the grandfathering provision of G. L. c. 94G, § 3(a)(1). Section 3(a)(1) provides in relevant part as follows:

> (a) A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided that they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter and that
>
> (1) govern the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories, except that zoning ordinances or bylaws shall not operate to (i) prevent the conversion of a medical marijuana treatment center licensed or registered not later than July 1, 2017 engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a

> marijuana establishment engaged in the same type of activity under this chapter…

The town contends that the plaintiffs, although they hold a state license to operate a medical marijuana dispensary and a special permit for a medical marijuana dispensary, are not "engaged" in the sale of medical marijuana within the meaning of the statute because they have not yet constructed the building authorized by the license and the special permit, nor commenced the actual sale of medical marijuana at the Property. The parties agree that the reason the plaintiffs have not proceeded with the construction and operation of the authorized facility is the appeal of the special permit filed by an abutter to the Property in Superior Court. Although the case has been tried and decided, the decision of the Superior Court, favorable to CommCan and Rosenfeld, is on appeal and is not yet final.

The town, while acknowledging the pendency of the case in Superior Court, notes that an owner whose special permit has been appealed is entitled to build and commence the authorized use at risk while an appeal is pending. See G. L. c. 40A, §11, 7th par. (holder of duly issued special permit subject to appeal may build at risk that court will order the work undone). At argument, the parties agreed that the reason the project has not moved forward with actual construction and sales is the pending abutter appeal, and Rosenfeld cites her affidavit filed in Superior Court, stating that even if she were intent on going forward at risk with the pending appeal, she would be unable to obtain construction financing until the appeal is finally resolved in her favor.

The town does not dispute this claim, nor could it credibly do so. "A great many things are possible…but not practical."[16] The court acknowledges and accepts as an undisputed fact the practical impossibility of obtaining construction financing and going forward with construction "at risk" during the pendency of the appeal of the special permit. The court takes judicial notice that no responsible bank or other financing entity would authorize construction financing under such circumstances, and no responsible applicant would proceed at risk even if financing were not an issue. The question, then, under these acknowledged circumstances, where the pending appeal prevents CommCan from physically completing its facility and commencing actual operation of the dispensary, is whether CommCan is "engaged" in the cultivation or sale of medical marijuana at the Property within the meaning of G. L. c. 94G, § 3(a)(1).

In interpreting the meaning of the word "engaged" in the statute, "the statutory language is the principal source of insight into legislative purpose." *Bronstein v. Prudential Ins. Co. of Am.*, 390 Mass. 701, 704 (1984). "We ordinarily begin with the plain language of the statute…'When a statute does not define its words[,] we give them their usual and accepted meanings, as long as these meanings are consistent with the statutory purpose.'" *Drake v. Town of Leicester*, 484 Mass. 198 (2020) (slip op. at 4) (internal citation omitted).

"When a statute is 'capable of being understood by reasonably well-informed persons in two or more different senses,' it is ambiguous." *Meyer v. Nantucket*, 78 Mass. App. Ct. 385, 390 (2010), quoting *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 818 (2006). Using principles of statutory construction to interpret its meaning, the court looks "to the intent of the Legislature 'ascertained from all its words construed by the ordinary and approved usage

[16] Isaac Asimov, *Prelude to Foundation*, p. 111 (Doubleday, 1988).

of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.'" *DiFiore v. American Airlines, Inc.*, 454 Mass. 486, 490 (2009), quoting *Industrial Fin. Corp. v. State Tax Comm'n*, 367 Mass 360, 364 (1975).

The plain meaning of the language in the statute, including the use of the word "engaged," is not on its face ambiguous. To be "engaged" in an activity is to be "involved in activity; occupied; busy." *Merriam-Webster Dictionary.* The town does not contend otherwise, but argues that unless the plaintiffs have actually constructed the building authorized by their special permit, and commenced the distribution of medical marijuana, then they are not "engaged" in that activity. This is too narrow a view of the authorized activity. The commencement of the actual sale of marijuana at the Property cannot occur until a number of hurdles have been overcome by the plaintiffs. Those hurdles include authorization to conduct a medical marijuana facility by the issuance of a provisional license, the signing of a host community agreement, the issuance of a special permit, the construction of the facility, the final inspections necessary to authorize the commencement of sales, and finally, the commencement of actual sales. The plaintiffs, without dispute, have obtained the necessary provisional state license (which would be converted to a final license upon the completion of construction and inspection of the completed facility); they have signed a host community agreement with the town; they have obtained a special permit, subject to the pending appeal; and they have actively litigated the appeal that is otherwise preventing them from physically moving forward with construction. In short, they have actively and continuously moved

forward in their efforts to exercise the rights granted by their license. This constitutes being "engaged" in the activities authorized by their provisional license, as the plaintiffs have been "involved in [the] activity" of, "occupied" with, and "busy" with commencing the sale of marijuana—by obtaining a host community agreement and a special permit, and by actively opposing the abutter appeal of the grant of their special permit, so as to permit them to proceed with the physical construction of the project and the commencement of sales.

In strikingly similar circumstances, the developer of two related multi-family housing developments—one market rate, and one a G. L. c. 40B affordable housing development—was found to have "exercised" its rights under a use variance within the one-year requirement of G. L. c. 40A, § 10,[17] even though it had not commenced construction within a year of the grant of the variance. In *Green v. Zoning Bd. of Appeals of Southborough*, 96 Mass. App. Ct. 126 (2019), a developer was granted a use variance to construct a multi-family housing development, subject to a condition that the variance would not be effective until approval of a related affordable housing development. The comprehensive permit for the affordable housing development was not issued for another fifteen months, and a neighbor sought a declaration that the use variance had lapsed by reason of not having been exercised within one year. The Appeals Court held that the developer had indeed "exercised" its rights under the use variance by actively pursuing those activities necessary to get the project to a point where coustruction could begin, including redesigning the project in accordance with an agreement with other neighbors and by pursuing approval of the

[17] G. L. c. 40A, § 10, provides in relevant part that "[i]f the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse[,]" unless otherwise extended.

comprehensive permit that was related to the part of the project for which the variance had been granted. *Id.* at 132.

Just as the developer in *Green* "exercised" its variance by pursuing the related comprehensive permit necessary to proceed with its entire project, the plaintiffs have "engaged in the cultivation, manufacture or sale of marijuana" by pursuing the activities necessary to commence the sale of medical marijuana at the licensed dispensary, including the active litigation of the claims of an abutter seeking to annul the special permit necessary to the operation of the licensed dispensary. Accordingly, since the plaintiffs are thus "engaged in the cultivation, manufacture or sale of marijuana" within the meaning of G. L. c. 94G, § 3(a)(1), they are entitled to the benefits of the prohibition in the statute against the application of any zoning ordinances or bylaws that operate to prevent the conversion of a licensed medical marijuana dispensary to an establishment for the sale of marijuana to adults pursuant to G. L. c. 94G.

CONCLUSION

For the reasons stated above, the plaintiffs' motion for summary judgment is ALLOWED.

Judgment will enter accordingly.

/s/Howard P. Speicher
Howard P. Speicher
Justice

Dated: April 8, 2020.

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

BRISTOL, ss.

MISCELLANEOUS CASE
No. 19 MISC 000357 (HPS)

ELLEN ROSENFELD, Trustee of THE ELLEN REALTY TRUST, and COMMCAN, INC.,

Plaintiffs,

v.

THE TOWN OF MANSFIELD, MASSACHUSETTS,

Defendant.

JUDGMENT

This action commenced on July 18, 2019, as an action in which the plaintiffs seek a determination pursuant to G. L. c. 240, § 14A, whether the town of Mansfield may, by its zoning bylaw, prohibit the conversion of the plaintiff CommCan, Inc.'s licensed medical marijuana treatment facility, licensed for operation at property owned by the plaintiff Ellen Rosenfeld, Trustee of The Ellen Realty Trust, at 611 West Street in Mansfield, to a facility for the sale of marijuana to adults pursuant to G. L. c. 94G. The case came on for a hearing before the court (Speicher, J.) on the plaintiffs' motion for summary judgment on March 5, 2020, and was taken under advisement on that date. In a decision of even date, the court has ALLOWED the plaintiffs' motion for summary judgment. In accordance with the court's decision, it is

ORDERED, ADJUDGED and DECLARED on the sole count of the Complaint that the town of Mansfield zoning bylaw shall not operate to prevent the conversion of the medical marijuana treatment center licensed or registered to CommCan, Inc. to operate at the property at 611 West Street in Mansfield, to an establishment for the sale of marijuana to adults pursuant to G. L. c. 94G, and it is further

ORDERED that today's decision, and this Judgment issued pursuant thereto, dispose of this entire case; the court has adjudicated or dismissed all claims by all parties in this action and has not reserved decision on any claim or defense.

By the Court (Speicher, J.)
/s/ Howard P. Speicher
Attest:

_____
Deborah J. Patterson
Recorder

Dated: April 8, 2020

Part I ADMINISTRATION OF THE GOVERNMENT

Title VII CITIES, TOWNS AND DISTRICTS

Chapter 40A ZONING

Section 3 SUBJECTS WHICH ZONING MAY NOT REGULATE; EXEMPTIONS; PUBLIC HEARINGS; TEMPORARY MANUFACTURED HOME RESIDENCES

Section 3. No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee,

25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least $1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof; provided,

however, that the terms agriculture, aquaculture, floriculture and horticulture shall not include the growing, cultivation, distribution or dispensation of marijuana as defined in section 2 of chapter 369 of the acts of 2012, marihuana as defined in section 1 of chapter 94C or marijuana or marihuana as defined in section 1 of chapter 94G; and provided further, that nothing in this section shall preclude a municipality from establishing zoning by-laws or ordinances which allow commercial marijuana growing and cultivation on land used for commercial agriculture, aquaculture, floriculture, or horticulture. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.

No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. Lands or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the

department of telecommunications and cable or the department of public utilities shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public; provided however, that if lands or structures used or to be used by a public service corporation are located in more than one municipality such lands or structures may be exempted in particular respects from the operation of any zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and cable or the department of public utilities shall after notice to all affected communities and public hearing in one of said municipalities, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public. For the purpose of this section, the petition of a public service corporation relating to siting of a communications or cable television facility shall be filed with the department of telecommunications and cable. All other petitions shall be filed with the department of public utilities.

No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and

determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term "child care facility" shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D.

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provisions of this paragraph shall apply to every city or town, including, but not limited to the city of Boston and the city of Cambridge.

Family child care home and large family child care home, as defined in section 1A of chapter 15D, shall be an allowable use unless a city or town prohibits or specifically regulates such use in its zoning ordinances or by-laws.

No provision of a zoning ordinance or by-law shall be valid which sets apart districts by any boundary line which may be changed without adoption of an amendment to the zoning ordinance or by-law.

No zoning ordinance or by-law shall prohibit the owner and occupier of a residence which has been destroyed by fire or other natural holocaust from placing a manufactured home on the site of such residence and residing in such home for a period not to exceed twelve months while the residence is being rebuilt. Any such manufactured home shall be subject to the provisions of the state sanitary code.

No dimensional lot requirement of a zoning ordinance or by-law, including but not limited to, set back, front yard, side yard, rear yard and open space shall apply to handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person, as defined in section thirteen A of chapter twenty-two.

No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

No zoning ordinance or by-law shall prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator. Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna structures for the purposes of health, safety, or aesthetics; provided, however, that such ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio

operators and constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the city or town enacting such ordinance or by-law.

Part I ADMINISTRATION OF THE GOVERNMENT

Title VII CITIES, TOWNS AND DISTRICTS

Chapter 40A ZONING

Section 11 NOTICE REQUIREMENTS FOR PUBLIC HEARINGS; PARTIES IN INTEREST DEFINED; REVIEW OF SPECIAL PERMIT PETITIONS; RECORDING COPIES OF SPECIAL PERMIT AND VARIANCE DECISIONS

Section 11. In all cases where notice of a public hearing is required notice shall be given by publication in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing. In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid. "Parties in interest" as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent

applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the permit granting authority or special permit granting authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes. The permit granting authority or special permit granting authority may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail, and may order special notice to any such person, giving not less than five nor more than ten additional days to reply.

Publications and notices required by this section shall contain the name of the petitioner, a description of the area or premises, street address, if any, or other adequate identification of the location, of the area or premises which is the subject of the petition, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

Zoning ordinances or by-laws may provide that petitions for special permits shall be submitted to and reviewed by one or more of the following and may further provide that such reviews may be held jointly:—the board of health, the planning board or department, the city or town engineer, the conservation

commission or any other town agency or board. Any such board or agency to which petitions are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the special permit granting authority and to the applicant; provided, however, that failure of any such board or agency to make recommendations within thirty-five days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.

When a planning board or department is also the special permit granting authority for a special permit applicable to a subdivision plan, the planning board or department may hold the special permit public hearing together with a public hearing required by sections 81K to 81GG inclusive of chapter 41 and allow for the publication of a single advertisement giving notice of the consolidated hearing.

Upon the granting of a variance or special permit, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such variance or permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and city or town clerk.

No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, or that if it is a variance which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the city or town clerk stating the fact that the permit granting authority failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within

the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XV REGULATION OF TRADE

Chapter 94G REGULATION OF THE USE AND DISTRIBUTION OF MARIJUANA NOT MEDICALLY PRESCRIBED

Section 3 LOCAL CONTROL

Section 3. Local control

(a) A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter and that:

(1) govern the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories, except that zoning ordinances or by-laws shall not operate to: (i) prevent the conversion of a medical marijuana treatment center licensed or registered not later than July 1, 2017 engaged in the cultivation, manufacture or sale of marijuana or marijuana

products to a marijuana establishment engaged in the same type of activity under this chapter; or (ii) limit the number of marijuana establishments below the limits established pursuant to clause (2);

(2) limit the number of marijuana establishments in the city or town; provided, however, that in the case of a city or town in which the majority of voters voted in the affirmative for question 4 on the 2016 state election ballot, entitled "Legalization, Regulation, and Taxation of Marijuana", and after December 31, 2019 in the case of any other city or town, the city or town shall submit any by-law or ordinance for approval to the voters pursuant to the procedure in subsection (e) before adopting the by-law or ordinance if it would:

(i) prohibit the operation of 1 or more types of marijuana establishments within the city or town;

(ii) limit the number of marijuana retailers to fewer than 20 per cent of the number of licenses issued within the city or town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under section 15 of chapter 138; or

(iii) limit the number of any type of marijuana establishment to fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the city or town;

(3) restrict the licensed cultivation, processing and manufacturing of marijuana that is a public nuisance;

(4) establish reasonable restrictions on public signs related to marijuana establishments; provided, however, that if a city or town enacts an ordinance or by-law above the commission's standard, that local ordinance or by-law shall not impose a standard for signage more restrictive than those applicable to retail establishments that sell alcoholic beverages within that city or town; and

(5) establish a civil penalty for violation of an ordinance or by-law enacted pursuant to this subsection, similar to a penalty imposed for violation of an ordinance or by-law relating to alcoholic beverages.

(b) The city council of a city and the board of selectmen of a town shall, upon the filing with the city or town clerk of a petition (i) signed by not fewer than 10 per cent of the number of voters of such city or town voting at the state election preceding the filing of the petition and (ii) conforming to the provisions of the General Laws relating to initiative petitions at the municipal level, request that the question of whether to allow, in such city or town, the sale of marijuana and marijuana products for consumption on the premises where sold be submitted to the voters of such city or town at the next biennial state election. If a majority of the votes cast in the city or town are not in favor of allowing the consumption of marijuana or marijuana products on the premises where sold, such city or town shall be taken to have not authorized the consumption of marijuana and marijuana products on the premises where sold.

(c) No city or town shall prohibit the transportation of marijuana or marijuana products or adopt an ordinance or by-law that makes the transportation of marijuana or marijuana products unreasonably impracticable.

(d) A marijuana establishment or a medical marijuana treatment center seeking to operate or continue to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment or a medical marijuana treatment center. An agreement between a marijuana establishment or a medical marijuana treatment center and a host community may include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center and shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years. Any cost to a city or town imposed by the operation of a marijuana establishment or medical marijuana treatment center shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4.

(e) If an ordinance or by-law shall be submitted for approval pursuant to clause (2) of subsection (a), the following procedures shall be followed:

(1) The city solicitor or town counsel shall prepare a fair and concise summary of the proposed ordinance or by-law which shall make clear the number and types of marijuana establishments which shall be permitted to operate under the proposed ordinance and by-law and shall be included on the ballot.

(2) A ballot shall be prepared asking "Shall this [city or town] adopt the following [by-law or ordinance]? [solicitor/counsel summary] [full text of by-law or ordinance]"

(3) If the majority of the votes cast in answer to the question are in the affirmative, the city or town may adopt the by-law or ordinance, but if the majority of votes cast is in the negative, the city or town shall not adopt the by-law or ordinance.

A ballot question under this subsection may be placed on the ballot at a regular or special election held by the city or town by a vote of the board of selectmen or by the city or town council, with the approval of the mayor or chief executive officer of a city that does not have a mayor, and subject to a municipal charter, if applicable.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XV REGULATION OF TRADE

Chapter 94G REGULATION OF THE USE AND DISTRIBUTION OF MARIJUANA NOT MEDICALLY PRESCRIBED

Section 5 LICENSING OF MARIJUANA ESTABLISHMENTS

Section 5. Licensing of marijuana establishments

(a) Upon receipt of a complete marijuana establishment license application and the application fee, the commission shall forward a copy of the application to the city or town in which the marijuana establishment is to be located, determine whether the applicant and the premises qualify for the license and has complied with this chapter and shall, within 90 days:

(1) issue the appropriate license; or

(2) send to the applicant a notice of rejection setting forth specific reasons why the commission did not approve the license application.

(b) The commission shall approve a marijuana establishment license application and issue a license if:

(1) the prospective marijuana establishment has submitted an application in compliance with regulations made by the commission, the applicant satisfies the requirements established by the commission, the applicant is in compliance with this chapter and the regulations made by the commission and the applicant has paid the required fee;

(2) the commission is not notified by the city or town in which the proposed marijuana establishment will be located that the proposed marijuana establishment is not in compliance with an ordinance or by-law consistent with section 3 of this chapter and in effect at the time of application;

(3) the property where the proposed marijuana establishment is to be located, at the time the license application is received by the commission, is not located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a city or town adopts an ordinance or by-law that reduces the distance requirement; and

(4) an individual who will be a controlling person of the proposed marijuana establishment has not been convicted of a felony or convicted of an offense in another state that would be a felony in the commonwealth, except a prior conviction solely for a marijuana offense or solely for a violation of section 34 of chapter 94C of the General Laws, unless the offense involved distribution of a controlled substance, including marijuana, to a minor.

Part II REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS

Title I TITLE TO REAL PROPERTY

Chapter 185 THE LAND COURT AND REGISTRATION OF TITLE TO LAND

Section 1 JURISDICTION; PLACE OF SITTINGS; RULES AND FORMS OF PROCEDURE

Section 1. The land court department established under section one of chapter two hundred and eleven B shall be a court of record, and wherever the words "land court", or wherever in this chapter the word "court" is used in that context, they shall refer to the land court department of the trial court, and the words "judge of the land court" or the word "judge", in context, shall mean an associate justice of the trial court appointed to the land court department. The land court department shall have exclusive original jurisdiction of the following matters:

(a) Complaints for the confirmation and registration and complaints for the confirmation without registration of title to land and easements or rights in land held and possessed in fee simple within the commonwealth, with power to hear and determine all

questions arising upon such complaints, and such other questions as may come before it under this chapter, subject to all rights to jury trial and of appeal provided by law. The proceedings upon such complaints shall be proceedings in rem against the land, and the judgments shall operate directly on the land and vest and establish title thereto. A certified copy of the judgment of confirmation and registration shall be filed and registered in the registry district or districts where the land or any portion thereof lies, as provided in section forty-eight, and a certificate of title in the form prescribed by law shall be issued pursuant thereto. Immediately upon the entry of a judgment of confirmation without registration, the recorder shall cause a certified copy of the same to be recorded in the registry of deeds for the district or districts where the land or any portion thereof lies, and thereafter, the land therein described shall be dealt with as unregistered land.

(a1/2) Complaints affecting title to registered land, with the exception of actions commenced pursuant to chapter two hundred and eight or two hundred and nine.

(b) Proceedings for foreclosure of and for redemption from tax titles under chapter sixty.

(c) Actions to recover freehold estates under chapter two hundred and thirty-seven. In such an action brought in accordance with section forty-seven of chapter two hundred and thirty-six, where the tenant is entitled under clause (2) of section nine of chapter one hundred and nine A to retain the real estate as security for

repayment of the consideration paid therefor by him, said court may determine the amount of such consideration and may order a judgment for possession upon being satisfied that such amount, with lawful interest, has been paid or tendered by the plaintiff to the defendant.

(d) Petitions to require actions to try title to real estate, under sections one to five, inclusive, of chapter two hundred and forty.

(e) Complaints to determine the validity of encumbrances, under sections eleven to fourteen, inclusive, of chapter two hundred and forty.

(f) Complaints to discharge mortgages, under section fifteen of chapter two hundred and forty.

(g) Complaints under section twenty-seven of chapter two hundred and forty to establish power or authority to transfer an interest in real estate.

(h) Complaints to determine the boundaries of flats, under section nineteen of chapter two hundred and forty.

(i) Complaints under sections sixteen to eighteen, inclusive, of chapter two hundred and forty to determine whether or not equitable restrictions are enforceable.

(j) Complaints under section twelve of chapter forty-two to determine county, city, town or district boundaries.

(j1/2) Complaints under section fourteen A of chapter two hundred and forty to determine the validity and extent of municipal zoning ordinances, by-laws and regulations.

It shall also have original jurisdiction concurrent with the supreme judicial court and the superior court of the following:—

(k) All cases and matters cognizable under the general principles of equity jurisprudence where any right, title or interest in land is involved, including actions for specific performance of contracts.

(l) Actions under clauses (4) and (10) of section 3 of chapter 214, where any right, title or interest in real estate is involved.

(m) Actions under clause (8) of said section 3 of said chapter 214 or under section 9 of chapter 109A, where the property claimed to have been fraudulently conveyed or encumbered consists of rights, titles or interest in real estate only.

(n) Proceedings transferred to it under the provisions of section 4A of chapter 211.

(o) Civil actions of trespass to real estate involving title to real estate.

(p) Actions brought pursuant to the provisions of sections 7 and 17 of chapter 40A.

(q) Actions brought pursuant to sections 81B, 81V, 81Y, and 81BB of chapter 41.

(r) Actions brought pursuant to section 4 or 5 of chapter 249 where any right, title or interest in land is involved, or which arise under or involve the subdivision control law, the zoning act, or municipal zoning, subdivision, or land-use ordinances, by-laws or regulations.

(s) Actions brought pursuant to section 1 of chapter 245.

The land court department also shall have original jurisdiction concurrent with the probate courts of the following:—

(t) Petitions for partition under chapter 241.

The court shall hold its sittings in the cities of Boston, Fall River, and Worcester, but may adjourn from time to time to such other places as public convenience may require. In Suffolk county, the city council of the city of Boston shall provide suitable rooms for the sittings of said court in the same building with, or convenient to, the probate court or the registry of deeds. In Fall River and Worcester, and other counties, the chief justice of administration and management shall make court rooms, clerk facilities, and other trial facilities available to the land court. On or before February 1, 2007, the chief justice of the land court department shall establish procedures for holding regular sessions of the land court in Fall River and Worcester for the consideration of cases arising from central, western, and southeastern Massachusetts, as the caseload requires but not less than once per quarter.

The court shall have jurisdiction throughout the commonwealth, shall always be open, except on Saturdays, Sundays and legal holidays, and shall have a seal with which all orders, processes and papers made by or proceeding from the court and requiring a seal shall be sealed; provided, that, if the convenience of the public so requires, the court shall be open on such Saturdays, not legal holidays, and during such hours thereof, as the judges thereof may determine. Its notices, orders and processes may run into any county and be returnable as it directs.

The court shall from time to time make general rules and forms for procedure, which, before taking effect, shall be approved by the supreme judicial court or by a justice thereof.

Part III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

Title III REMEDIES RELATING TO REAL PROPERTY

Chapter 240 PROCEEDINGS FOR SETTLEMENT OF TITLE TO LAND

Section 14A MUNICIPAL ZONING ORDINANCES, ETC.; PETITION FOR JUDICIAL DETERMINATION OF VALIDITY

Section 14A. The owner of a freehold estate in possession in land may bring a petition in the land court against a city or town wherein such land is situated, which shall not be open to objection on the ground that a mere judgment, order or decree is sought, for determination as to the validity of a municipal ordinance, by-law or regulation, passed or adopted under the provisions of chapter forty A or under any special law relating to zoning, so called, which purports to restrict or limit the present or future use, enjoyment, improvement or development of such land, or any part thereof, or of present or future structures thereon, including alterations or repairs, or for determination of the extent to which any such municipal ordinance, by-law or regulation affects a proposed use, enjoyment, improvement or development of such land by the erection, alteration or repair of structures thereon or

otherwise as set forth in such petition. The right to file and prosecute such a petition shall not be affected by the fact that no permit or license to erect structures or to alter, improve or repair existing structures on such land has been applied for, nor by the fact that no architects' plans or drawings for such erection, alteration, improvement or repair have been prepared. The court may make binding determinations of right interpreting such ordinances, by-laws or regulations whether any consequential judgment or relief is or could be claimed or not.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross References—

Appearances before probate court, ALM GL c 215 § 42.

Signing of motions and other papers, ALM Civ Rule 7(b)(2).

Ad damnum clause is permitted but its inflation or exaggeration is tempered by Massachusetts Rules of Civil Procedure, Rule 11(a).

Federal Aspects—

Signings of Pleadings, Motions, and Other Papers, USCS Rules of Civil Procedure 11.

Research References—

5 Am Jur 2d, Appearance §§ 14, 36–39.

7 Am Jur 2d, Attorneys at Law § 41.

61A Am Jur 2d, Pleading § 339.

2 Am Jur Pl & Pr Forms (Rev), Appearance §§ 21 et seq.

11 Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure §§ 551 et seq.

Law Reviews—

Greenberg, *Sanctions: In Search of Standards.* 74 Mass. L. Rev. 155.

Freedman, *ABC's of Massachusetts Divorce Practice and Procedure: Revised to January 1, 1980.* 24 B.B.J. 5.

Texts—

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 2.07, Checklist: Understanding Attachments.

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 2.08, Understanding Writ of Attachment.

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 3.08, Checklist: Formal Drafting Requirements for Complaint.

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 3.11, Meeting General Pleading Requirements.

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 3.12, Meeting Verification Requirements.

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 3.16, Entering Appearance by Attorney.

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 4.19, Checklist: Complying with Form and Filing Requirements for Motions.

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LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 4.26, Complying with Drafting Requirements for Answer.

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LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 5.03, Checklist: Asserting Cross-claim Against Coparty.

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 5.09, Serving and Filing Cross-claim.

Swartz and Swartz, *Massachusetts Pleading and Practice: Forms and Commentary* (Matthew Bender) §§ 11, 11.1– 11.9.

Swartz, *Trial Handbook for Massachusetts Lawyers* 2d Ed §§ 1:12, 1:15.

Rule 12. Defenses and Objections — when and How Presented — by Pleading or Motion — Motion for Judgment on Pleadings

(a) When Presented.

(1) After service upon him of any pleading requiring a responsive pleading, a party shall serve such responsive pleading within 20 days unless otherwise directed by order of the court.

(2) The service of a motion permitted under this rule alters this period of time as follows, unless a different time is fixed by order of the court: (i) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (ii) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) Lack of jurisdiction over the subject matter;

(2) Lack of jurisdiction over the person;

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 7.08, Complying with Time Deadlines and Service Requirements.

LexisNexis Practice Guide: Massachusetts Civil Trial Practice § 9.19, Obtaining Judgment for Relief Not Demanded.

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 10.15, Filing and Serving Amended Pleadings, Supplemental Pleadings and Motions.

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 12.03, Checklist: Determining Timing and Sequence of Pretrial Practice.

LexisNexis Practice Guide: Massachusetts Civil Pretrial Practice § 12.04, Complying with Time Standards.

Swartz and Swartz, *Massachusetts Pleading and Practice—Forms and Commentary* (Matthew Bender) §§ 55.1–55.27.

Swartz, *Trial Handbook for Massachusetts Lawyers* 2d Ed §§ 3:11, 3:12.

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for admission under Rule 36, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations

or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

History—

Amended, effective May 1, 2002.

Reporters' Notes—

[1973] Except in a narrow class of cases, Massachusetts has up to now lacked any procedural device for terminating litigation in the interim between close of pleadings and trial. Under GL c 231, §§ 59 and 59B, only certain contract actions could be disposed of prior to trial. In all other types of litigation, no matter how little factual dispute involved, resolution had to await trial.

Rule 56, which, with a small addition, tracks Federal Rule 56 exactly, responds to the need which the statutes left unanswered. It proceeds on the principle that trials are necessary only to resolve issues of fact; if at any time the court is made aware of the total absence of such issues, it should on motion promptly adjudicate the legal questions which remain, and thus terminate the case.

The statutes, so far as they went, embodied this philosophy. They aimed "to avoid delay and expense of trials in cases where there is no genuine issue of fact." Albre Marble & Tile Co., Inc. v John Bowen Co., Inc., 338 Mass 394, 397, 155 NE2d 437, 439 (1959). Rule 56 will extend this principle beyond contract cases. Thus in tort actions where the facts are not disputed, summary judgment for one party will be appropriate. Should the facts concerning liability be undisputed, but damages controverted, Rule 56(c) authorizes partial summary judgment: the court may determine the liability issue, leaving for trial only the question of damages.

The important thing to realize about summary judgment under Rule 56 is that it can be granted if and only if there is "no genuine issue as to any material fact." If any such issue appears, summary judgment *must* be denied. So-called "trial by affidavits" has no place under Rule 56. Affidavits (or pleadings, depositions, answers to interrogatories, or admissions) are merely devices for demonstrating the absence of any genuine issue of material fact. Introduction of material controverting the moving party's assertions of fact raises such an issue and precludes summary judgment.

On the other hand, because Rule 56 recognizes only "genuine" material issues of fact, Rule 56(e) requires the opponent of any summary judgment motion to do something more than simply deny the proponent's allegations. Faced with a summary judgment motion supported by affidavits or the like, an opponent may not rely solely upon the allegations of his pleadings. He bears the burden of introducing enough countervailing data to demonstrate the existence of a genuine material factual issue.

If, however, the opponent is convinced that even on the movant's undisputed affidavits, the court should not grant summary judgment, he may decline to introduce his own materials and may instead fight the motion on entirely legal (as opposed to factual) grounds. Indeed, the final sentence of Rule 56(c) makes clear that in appropriate cases, summary judgment may be entered *against* the moving party. This is eminently logical. Because by definition the moving party is *always* asserting that the case contains no factual issues, the court should have the power, no matter who initiates the motion, to award judgment to the party legally entitled to prevail on the undisputed facts.

[2002] The 2002 amendment to Rule 56(c) deletes the phrase "on file" from the third sentence, in recognition of the fact that discovery documents are generally no longer separately filed with the court. See Rule 5(d) (2) and Superior Court Administrative Directive No. 90-2. The previous reference to admissions has also been replaced by a reference to "responses to requests for admission under Rule 36." The

trial or hearing at which they were used, subject to an order of confiscation or destruction, unless sooner delivered to the parties or counsel by whom they were presented or introduced. Unless otherwise ordered, jointly submitted exhibits will be considered to belong to the plaintiff. If in doubt as to the party or counsel entitled to delivery, the recorder may require an agreement of parties or counsel or an order of the court before delivery. After the expiration of three years from such trial or hearing, the recorder may destroy or discard such exhibits after giving thirty days' notice to the parties, if practicable.

Rule 4. Motions under Mass. R. Civ. P. 12(b)(1), 12(b)(6), 12(c) or 56.

A party moving under Mass. R. Civ. P. 12(b)(1), 12(b)(6), 12(c) or 56, or opposing such a motion, shall file with the motion or opposition a brief containing: (1) a statement of the issue or issues presented, (2) a statement of the legal elements, with citations to supporting law, of each claim upon which judgment is sought or opposed, (3) an argument in summary form, and (4) a short conclusion stating precisely the relief or order sought; otherwise the court may decline to act on the motion or consider the opposition, as the case may be.

Each motion under Rules 12(b)(1) or 56 shall be accompanied by a concise statement, in consecutive numbered paragraphs, of the material facts upon which the moving party relies, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, admissions and affidavits. If the motion is brought under Rule 56, the material facts in the statement must be those as to which the moving party contends there is no genuine issue to be tried.

Each opposition to a motion under Rules 12(b)(1) or 56 shall include: (1) a response, using the same paragraph numbers, to the moving party's statement of facts, and (2) in consecutive numbered paragraphs, a concise statement of any additional material facts which the opposing party deems relevant and necessary to the motion. Any response other than "admitted" to a statement of fact made by the moving party, and any statement of additional material fact, must include page or paragraph references to supporting pleadings, depositions, answers to interrogatories, admissions and affidavits, or else the facts described by the moving party as undisputed shall be deemed to have been admitted.

The statements filed by the moving party and the opposing party shall each be accompanied by an appendix, appropriately indexed, composed of: (1) all cited portions of the documents or other materials referenced in those statements, and (2) copies of all legal and other authorities cited in the briefs with the exception of the Massachusetts General Laws and cases reported in the official Massachusetts Reports, the Massachusetts Appeals Court Reports, or the Land Court Reporter. The opposing party's appendix need not duplicate any materials contained in the moving party's appendix so long as the cross-referencing is clear. The court need not look in the record or take judicial notice beyond the materials brought to its attention by the parties.

A copy of the motion, brief and (in the case of Rule 12(b)(1) and 56 motions) the statement of material facts and the appendix containing copies of supporting materials, shall be served upon all other parties and filed with the court within the time limits set forth in Land Court Standing Order No. 1-04, if applicable. Cross-motions must follow the same procedures and timeframes as motions, and must likewise be served and filed in accordance with Standing Order 1-04, if applicable. Responses to motions or cross-motions, including any

controverting statements and the materials supporting those statements (including any counter or Rule 56(e) affidavits), must be served upon all other parties and filed with the court within thirty (30) days after service of the motion or cross-motion. A hearing date shall be set by the court. Reply briefs, affidavits and other materials in support of the reply (if any) must be served on the parties and filed with the court no later than ten (10) days prior to the date the court first set for hearing; any rescheduling of the hearing date shall not change this deadline. Affidavits and other materials in support of the reply which, in the opinion of the court, are not responsive to the opposition or cross-motion, may be stricken. An opposing party's failure to file a cross-motion shall not preclude the court from granting dispositive relief to the opposing party if such relief is appropriate (see Rule 56(c)). Extensions or other modifications of the dates set forth above may be ordered by the court on its own motion for good reason and as the interests of justice require, or upon motion and for good cause shown.

The court need not act on any motion or cross-motion unless the parties have complied with the requirements of this rule and may deny any such motion or cross-motion which fails to comply.

Reporter's Note—
Standing Order No. 1-04 applies to certain cases filed on or after October 4, 2004.

Rule 5. All Other Motions

All motions not covered by Rule 4 must be filed with the court and marked by the moving party for hearing on at least seven (7) days, notice (the number of days to be calculated as provided in Mass. R. Civ. P. 6(a)) at such dates and times for the hearing of motions as shall be established and published by the court from time to time. It is the responsibility of the moving party to determine whether a motion must be heard by a particular judge and, if so, the motion must be marked for hearing before that judge at an appropriate date and time. The motion shall contain a statement of reasons, including supporting authorities, why the motion should be granted and a statement of the precise relief sought; otherwise the court may deny or decline to act on the motion. Unless the court, in its discretion, grants permission, all affidavits and other materials in support of the motion must be filed and served with the motion. Oppositions to such motions, and all materials in support of that opposition along with any cross-motions (including motions to strike), must be served and filed with the court so they are received by all other parties and by the court no later than noon one (1) business day prior to the date marked for the motion's hearing. Any papers not served and filed with the motion or opposition and in timely fashion may be filed only with leave of court.

Rule 6. Matters Which May Not Require Oral Argument

The court in its discretion may decide matters on submitted papers without oral argument, but only after having received written statements of reasons in support and opposition from all interested parties, or having given those parties fair opportunity to submit written statements.

Rule 7. Settlement of Discovery Disputes

The parties shall confer in advance of filing any motion under Mass. R. Civ. P. 26 or 37 in a good faith effort to narrow areas of disagreement to the fullest

935 CMR 500.000: ADULT USE OF MARIJUANA

Section

500.001: Purpose

The purpose of 935 CMR 500.000 is to implement St. 2016, c. 334, The Regulation and Taxation of Marijuana Act, as amended by St. 2017, c. 55, An Act to Ensure Safe Access to Marijuana.

500.002: Definitions

For the purposes of 935 CMR 500.000, the following terms shall have the following meanings:

Affixed means the attachment of a label or other packaging materials so that it is not easily removed or lost.

Area of Disproportionate Impact means a geographic area identified by the Commission for the purposes identified in 935 CMR 500.040 and 500.100, which has had historically high rates of arrest, conviction, and incarceration related to marijuana crimes.

Beverage means a liquid intended for drinking.

Cannabinoid means any of several compounds produced by marijuana plants that have medical and psychotropic effects.

Cannabinoid Profile means the amounts, expressed as the dry-weight percentages, of delta-nine-tetrahydrocannabinol, cannabidiol, tetrehydrocannabinolic acid and cannabidiolic acid in a cannabis or marijuana product. Amounts of other cannabinoids may be required by the Commission.

Cannabis or Marijuana or Marihuana, means all parts of any plant of the genus Cannabis, not excepted in 935 CMR 500.002: Cannabis or Marijuana or Marihuana(a) through (c) and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; clones of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in M.G.L. c. 94G, § 1; provided that cannabis shall not include:

(a) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination;

(b) hemp; or

(c) the weight of any other ingredient combined with cannabis or marijuana to prepare topical or oral administrations, food, drink or other products.

Cannabis or Marijuana Accessories means equipment, products, devices or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing cannabis or marijuana into the human body.

Cannabis or Marijuana Products means cannabis or marijuana and its products unless otherwise indicated. These include products have been manufactured and contain cannabis or marijuana or an extract from cannabis or marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Canopy means an area to be calculated in square feet and measured using clearly identifiable boundaries of all areas(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries, canopy may be noncontiguous, but each unique area included in the total canopy calculations shall be separated by an identifiable boundary which include, but are not limited to: interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedge rows, fencing, garden beds, or garden plots. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

Card Holder means a registered qualifying patient, personal caregiver, laboratory agent, or marijuana establishment agent who holds a valid registration card.

Ceases to Operate means a Marijuana Establishment closes and does not transact business for a period greater than 60 days with no substantial action taken to reopen. The Commission may determine that an establishment has ceased to operate based on its actual or apparent termination of operations.

500.002: continued

Citizen Review Committee means a nine-person advisory committee, the members of which will be appointed by the Commission or its designee and will serve two-year terms. The committee advises the Commission on the implementation of the Social Equity Program and the use of community reinvestment funds. The committee makes specific recommendations as to the use of community reinvestment funds in the areas of programming, restorative justice, jail diversion, workforce development, industry-specific technical assistance, and mentoring services, in areas of disproportionate impact.

Clone means a clipping from a cannabis or marijuana plant which can be rooted and grown.

Close Associate means a person who holds a relevant managerial, operational or financial interest in the business of an applicant or licensee and, by virtue of that interest or power, is able to exercise a significant influence over the management, operations or finances of a Marijuana Establishment licensed under 935 CMR 500.000.

Commission means the Massachusetts Cannabis Control Commission established by M.G.L. c. 10, § 76, or its designee. The Commission has authority to implement the state marijuana laws, which include, but are not limited to, St. 2016, c. 334 as amended by St. 2017, c. 55, M.G.L. c. 94G, and 935 CMR 500.000.

Community Reinvestment Funds means funds subject to appropriation by the legislature and available after the implementation, administration, and enforcement of state marijuana laws and any other purpose identified under M.G.L. c. 94G, § 14(b), which are deposited in the fund.

Consumer means a person who is 21 years of age or older.

Controlling Person means an officer, board member or other individual who has a financial or voting interest of 10% or greater in a Marijuana Establishment.

Commercially Available Candy means any product that is manufactured and packaged in the form of bars, drops, or pieces and that includes a sweetened mixture of chocolate, caramel, nougat, nuts, fruit, cream, honey, marshmallow or any similar combination to create a dessert-like confection.

Community Reinvestment Funds means tax revenue funds subject to appropriation by the legislature and available after implementation, administration, and enforcement of state marijuana law have been covered in accordance with M.G.L. c. 94G, § 14(b). The Citizen Review Committee will make recommendations for the administration of funds for the following purposes: programming for restorative justice, jail diversion, workforce development, industry specific technical assistance, and mentoring services for economically-disadvantaged persons in communities disproportionately impacted by high rates of arrest and incarceration for marijuana offenses pursuant to M.G.L. c. 94C.

Consumer means a person who is 21 years of age or older.

Controlling Person means an officer, board member or other individual who has a financial or voting interest of 10% or greater in a Marijuana Establishment.

Craft Marijuana Cooperative means a Marijuana Cultivator comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package and brand cannabis or marijuana products to transport marijuana to Marijuana Establishments, but not to consumers.

500.002: continued

Cultivation Batch means a collection of cannabis or marijuana plants from the same seed or plant stock that are cultivated and harvested together, and receive an identical propagation and cultivation treatment including, but not limited to: growing media, ambient conditions, watering and light regimes and agricultural or hydroponic inputs. Clones that come from the same plant are one batch. The marijuana licensee shall assign and record a unique, sequential alphanumeric identifier to each cultivation batch for the purposes of production tracking, product labeling and product recalls.

Department of Public Health or DPH means the Massachusetts Department of Public Health, unless otherwise specified.

Department of Revenue or DOR means the Massachusetts Department of Revenue, unless otherwise specified.

Duress Alarm means a silent security alarm signal generated by the entry of a designated code into an arming station that signals an alarm user is under duress and turns off the system.

Economic Empowerment Applicant means an applicant who demonstrates experience in or business practices that promote economic empowerment in areas of disproportionate impact.

Edible Cannabis Products or Edibles means a cannabis or marijuana product that is to be consumed by humans by eating or drinking. These products, when created or sold by a Registered Marijuana Dispensary (RMD), shall not be considered a food or a drug as defined in M.G.L. c. 94, § 1.

Enclosed Area means an indoor or outdoor area equipped with locks or other security devices, which is accessible only to consumers 21 years of age or older, marijuana establishment agents, registered qualifying patients, or caregivers.

Executive means the chair of a board of directors, chief executive officer, executive director, president, senior director, other officer, and any other executive leader of a Marijuana Establishment.

Existing License Transporter means an entity that is otherwise licensed by the Commission and also licensed to purchase, obtain, and possess cannabis or marijuana products solely for the purpose of transporting, temporary storage, sale and distribution on behalf of other Marijuana Establishments to other establishments, but not to consumers.

Fingerprint-based Background Check Trust Fund means a fund established in M.G.L. c. 29, § 2HHH, in which fees for fingerprint background checks are deposited.

Finished Marijuana means usable marijuana, cannabis resin or cannabis concentrate.

Flowering means the gametophytic or reproductive state of cannabis or marijuana in which the plant produces flowers, trichomes, and cannabinoids characteristic of marijuana.

Food and Drug Administration or FDA means the United States Food and Drug Administration.

Healthcare Provider means a certifying physician, certifying certified Nurse Practitioner or certifying physician's assistant qualified under 105 CMR 725.000: *Implementation of an Act for the Humanitarian Medical Use of Marijuana*, to issue written certifications for the medical use of marijuana.

Hemp means the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of cannabis or marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

500.002: continued

Holdup Alarm means a silent alarm signal generated by the manual activation of a device that signals a robbery in progress.

Host Community means a municipality in which a Marijuana Establishment is located or in which an applicant has proposed locating an establishment.

Independent Testing Laboratory means a laboratory that is licensed by the Commission and is:
(a) accredited to the International Organization for Standardization 17025 (ISO/IEC 17025: 2017) by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the Commission;
(b) independent financially from any Medical Marijuana Treatment Center (RMD), Marijuana Establishment or licensee for which it conducts a test; and
(c) qualified to test cannabis or marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.

Known Allergen means milk, egg, fish, crustacean shellfish, tree nuts, wheat, peanuts, and soybeans, or such other allergen identified by the Commission.

Laboratory Agent means an employee of an Independent Testing Laboratory who transports, possesses or tests cannabis or marijuana in compliance with 935 CMR 500.000.

Law Enforcement Authorities means local law enforcement unless otherwise indicated.

License means the certificate issued by the Commission that confirms that a Marijuana Establishment has met all applicable requirements pursuant to St. 2012, c. 334, as amended by St. 2017, c. 55 and 935 CMR 500.000. A Marijuana Establishment may be eligible for a provisional or final license.

Licensee means a person or entity licensed by the Commission to operate a Marijuana Establishment under 935 CMR 500.000.

Limited Access Area means an indoor or outdoor area on the registered premises of a Marijuana Establishment where cannabis or marijuana products, or their byproducts are cultivated, stored, weighed, packaged, processed, or disposed, under the control of a Marijuana Establishment, with access limited to only those marijuana establishment agents designated by the establishment.

Local Authorities means local municipal authorities unless otherwise indicated.

Manufacture means to compound, blend, extract, infuse or otherwise make or prepare a cannabis or marijuana product.

Marijuana Cultivator means an entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Marijuana Establishments, but not to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.

Marijuana Establishment means a Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a medical marijuana treatment center.

Marijuana Establishment Agent means a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant or contractor who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of marijuana.

Marijuana Product Manufacturer means an entity licensed to obtain, manufacture, process and package cannabis or marijuana products and to transfer these products to other Marijuana Establishments, but not to consumers.

500.002: continued

Marijuana Regulation Fund means the fund established under M.G.L. c. 94G, § 14, in which fees, fines, and other monies collected by the Commission are deposited, except for fees collected by the Commission on behalf of other state agencies.

Marijuana Retailer means an entity licensed to purchase and transport cannabis or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

Marijuana Transporter means an entity, not otherwise licensed by the Commission, that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers. Marijuana Transporters may be an Existing Licensee Transporter or Third Party Transporter.

Massachusetts Resident means a person whose primary residence is Massachusetts.

Medical Marijuana Treatment Center, also known as a Registered Marijuana Dispensary (RMD), means a not-for-profit entity registered under 105 CMR 725.100: *Registration of Registered Marijuana Dispensaries*, that acquires, cultivates, possesses, processes (including development of related products such as edible cannabis or marijuana products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing cannabis or marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of cannabis or marijuana for medical use.

Medical Registration Card means an identification card issued by the Medical Use of Marijuana Program within the DPH, to a registered qualifying patient, personal caregiver, institutional caregiver, RMD agent or laboratory agent. The medical registration card allows access into Commission-supported databases. The medical registration card facilitates verification of an individual registrant's status, including, but not limited to, the identification by the Commission and law enforcement authorities, of those individuals who are exempt from Massachusetts criminal and civil penalties under St. 2012, c. 369, 105 CMR 725.000: *Implementation of an Act for the Humanitarian Medical Use of Marijuana*, St. 2016, c. 334 as amended by St. 2017, c. 55. and 935 CMR 500.000

Member means a member of a non-profit entity incorporated pursuant to M.G.L. c. 180.

Microbusiness means a colocated Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

Mycotoxin means a secondary metabolite of a microfungus that is capable of causing death or illness in humans and other animals. For the purposes of this chapter, mycotoxin shall include alfatoxin B1, alfatoxin B2, alfatoxin G1, alfatoxin G2, and ochratoxin A.

Panic Alarm means an audible security alarm signal generated by the manual activation of a device that signals a life threatening or emergency situation and calls for a law enforcement response.

Paraphernalia means "drug paraphernalia" as defined in M.G.L. c. 94C, § 1.

Person means an individual or entity under the laws of the Commonwealth.

500.002: continued

Personal Caregiver means a person, registered by the Commission, who is 21 years of age or older, who has agreed to assist with a registered qualifying patient's medical use of marijuana, and is not the registered qualifying patient's certifying healthcare provider. A visiting nurse, personal care attendant, or home health aide providing care to a registered qualifying patient may serve as a personal caregiver, including to patients younger than 18 years old as a second caregiver.

Premises means any indoor or outdoor location over which a Marijuana Establishment or its agents may lawfully exert substantial supervision or control over entry or access to the property or the conduct of persons.

Priority Applicant means a Registered Marijuana Dispensary applicant (RMD Applicant) or an Economic Empowerment Applicant.

Process or Processing means to harvest, dry, cure, trim and separate parts of the cannabis or marijuana plant by manual or mechanical means, except it shall not include manufacture as defined in 935 CMR 500.002.

Production Area means a limited access area within the Marijuana Establishment where cannabis or marijuana is handled or produced in preparation for sale.

Production Batch means a batch of finished plant material, cannabis resin, cannabis concentrate or marijuana-infused product made at the same time, using the same methods, equipment and ingredients. The licensee shall assign and record a unique, sequential alphanumeric identifier to each production batch for the purposes of production tracking, product labeling and product recalls. All production batches shall be traceable to one or more cannabis or marijuana cultivation batches.

Propagation means the reproduction of cannabis or marijuana plants by seeds, cuttings, or grafting.

Provisional Marijuana Establishment License means a certificate issued by the Commission confirming that a Marijuana Establishment has completed the application process.

Qualifying Patient means a Massachusetts resident 18 years of age or older who has been diagnosed by a Massachusetts licensed healthcare provider as having a debilitating medical condition, or a Massachusetts resident younger than 18 years old who has been diagnosed by two Massachusetts licensed certifying physicians, at least one of whom is a board-certified pediatrician or board-certified pediatric subspecialist, as having a debilitating medical condition that is also a life-limiting illness, subject to 105 CMR 725.010(J): *Written Certification of a Debilitating Medical Condition for a Qualifying Patient.*

Real-time Inventory or Seed-to-sale Tracking means an electronic system that provides the electronic tracking of an individual cannabis or marijuana plant, including its cultivation, growth, harvest and preparation of cannabis or marijuana products, if any, and final sale. This system shall utilize a unique-plant identification and unique-batch identification. It will also be able to track agents' and licensees' involvement with the marijuana product.

Registered Qualifying Patient means a qualifying patient who has applied for and received a medical registration card from the Commission.

Registrant means the holder of a registration card or a license.

Registration Card means an identification card issued by the Commission to a Marijuana Establishment or laboratory agent. The registration card allows access into Commission-supported databases. The registration card facilitates verification of an individual registrant's status, including, but not limited to the identification by the Commission and law enforcement authorities of those individuals who are exempt from Massachusetts criminal and civil penalties under St. 2016, c. 334 as amended by St. 2017, c. 55, and 935 CMR 500.000.

500.002: continued

Research Facility means an entity licensed to engage in research projects by the Commission.

Residual Solvent means a volatile organic chemical used in the manufacture of a cannabis or marijuana product and that is not completely removed by practical manufacturing techniques.

Responsible Vendor means a Marijuana Establishment that the Commission has determined to have completed the initial training requirements and has maintained its training requirement under 935 CMR 500.105(2).

Responsible Vendor Training Program means a program operated by an education provider accredited by the Commission to provide the annual minimum two hour of responsible vendor training to marijuana establishment agents

RMD Applicant means a previously Registered Marijuana Dispensary with a final or provisional certificate of registration in good standing with the DPH.

Social Equity Training and Technical Assistance Fund means a fund established and administered by the Commission for the purposes of training and technical assistance to residents interested in participating in the cannabis industry and technical assistance for existing Social Equity Program licensees.

Unreasonably Impracticable means that the measures necessary to comply with the regulations, ordinances or bylaws adopted pursuant to St. 2016, c. 334, as amended by St. 2017, c. 55 or 935 CMR 500.000 subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a Marijuana Establishment.

Usable Marijuana means the fresh or dried leaves and flowers of the female marijuana plant and any mixture or preparation thereof, including cannabis or marijuana products, but does not include the seedlings, seeds, stalks, roots of the plant, or marijuana rendered unusable in accordance with 935 CMR 500.105(12)(c).

Vegetation means the sporophytic state of the cannabis or marijuana plant, which is a form of asexual reproduction in plants during which plants do not produce resin or flowers and are bulking up to a desired production size for flowering.

Visitor means an individual, other than a Marijuana Establishment Agent authorized by the Marijuana Establishment, on the premises of an establishment for a purpose related to its operations and consistent with the objectives of St. 2016, c. 334, as amended by St. 2017, c. 55 and 935 CMR 500.000, provided, however, that no such individual shall be younger than 21 years old.

United States or US means the United States of America.

500.005: Fees

(1) Marijuana Establishment Application and License Fees.

(a) Each applicant for licensure as a Marijuana Establishment, shall pay to the Commission a nonrefundable application fee and an annual license fee, and a monthly seed-to-sale licensing fee. These fees do not include the costs associated with the seed-to-sale licensing system, which includes a monthly program fee and fees for plant and package tags. These fees do not include the costs associated with criminal background checks as required under 935 CMR 500.101(1)(b); 935 CMR 500.101(2)(c); or 935 CMR 500.030.

(b) Application fees are waived for Social Equity Program participants. Seed-to-sale monthly program fees are waived for Economic Empowerment Applicants, Craft Marijuana Cooperatives, and Microbusinesses. This waiver does not include other costs associated with the seed-to-sale licensing system, specifically the fees for plant and package tags. This waiver does not include the costs associated with background checks. All other applicants are responsible for the payment of fees in accordance with 935 CMR 500.005(a).

(c) Each application shall choose the tier at which it will be initially licensed.

500.005: continued

(d) Application and Annual License Fee Schedule:

License Types	Application Fees (Indoor/Outdoor)	Annual License Fee (Indoor/Outdoor)
Indoor or Outdoor Cultivator		
Tier 1: up to 5,000 square feet	$200 (I)/$100 (O)	$1,250 (I)/$625 (O)
Tier 2: 5,001 to 10,000 sq. ft.	$400 (I)/$200 (O)	$2,500 (I)/$1,250 (O)
Tier 3: 10,001 to 20,000 sq. ft.	$600 (I)/$300 (O)	$5,000 (I)/$2,500 (O)
Tier 4: 20,001 to 30,000 sq. ft.	$600 (I)/$300 (O)	$7,500 (I)/$3,750 (O)
Tier 5: 30,001 to 40,000 sq. ft.	$600 (I)/$300 (O)	$10,000 (I)/$5,000 (O)
Tier 6: 40,001 to 50,000 sq. ft.	$600 (I)/$300 (O)	$12,500 (I)/$6,250 (O)
Tier 7: 50,001 to 60,000 sq. ft.	$600 (I)/$300 (O)	$15,000 (I)/$7,500 (O)
Tier 8: 60,001 to 70,000 sq. ft.	$600 (I)/$300 (O)	$17,500 (I)/$8,750 (O)
Tier 9: 70,001 to 80,000 sq. ft.	$600 (I)/$300 (O)	$20,000 (I)/$10,000 (O)
Tier 10: 80,001 to 90,000 sq. ft.	$600 (I)/$300 (O)	$22,500 (I)/$11,250 (O)
Tier 11: 90,001 to 100,000 sq. ft.	$600 (I)/$300 (O)	$25,000 (I)/$12,500 (O)
Craft Marijuana Cooperative	Total fees for its canopy. If more than six locations, add $200 (I)/$100(O) per additional location.	Total fees for its canopy. If more than six locations, add $1,250(I)/$625(O) per additional location.
Microbusiness	$300	50% of all applicable fees
Manufacturing	$300	$5,000
Independent Testing Laboratory	$300	$5,000
Retail (brick and mortar)	$300	$5,000
Third-party Transporter	$300	$5,000
Existing Licensee Transporter	$300	$5,000
Research Laboratory	$300	$1,000

(e) The application fee for a RMD conversion pursuant to 935 CMR 500.101(2) shall be $450, and the annual license fee shall be the sum of the applicable cultivation, retail, and manufacturing license fees.

(f) Other fees:

Name Change Fee	$100
Location Change Fee	50% of applicable License Fee
Change in Building Structure Fee	$500
Change in Ownership or Control Fee	$500

(2) Registration Card Holder Fees.

(a) An applicant for a registration card as a marijuana establishment agent, an independent testing laboratory agent, or any other position designated as an agent by the Commission shall pay a nonrefundable application fee of $50 with any such application.

(b) An applicant for a renewal of a registration card as a marijuana establishment agent, an independent testing laboratory agent, or any other position designated as an agent by the Commission shall pay a fee of $50.

(3) Fingerprint-based Criminal Background Checks Fees.

(a) All persons required to submit fingerprints shall pay a fee to be established by the Massachusetts Secretary of Administration and Finance, in consultation with Massachusetts Secretary of Public Safety and the Commission, to offset the costs of operating and administering a fingerprint-based criminal background-check system.

(b) The Commission may pay the fee on behalf of applicants or reimburse applicants for all or part of the fee on the grounds of financial hardship.

(c) Any fees collected from fingerprinting activity under 935 CMR 500.000 shall be deposited into the Fingerprint-based Background Check Trust Fund, established in M.G.L. c. 29, § 2HHH.

500.029: Registration and Conduct of Laboratory Agents

(1) The Commission shall issue a Laboratory Agent registration card to each applicant associated as an employee or volunteer with an Independent Testing Laboratory licensed pursuant to 935 CMR 500.050(7), who is determined to be suitable for registration. All such individuals shall:

(a) Be 21 years of age or older;

(b) Have not been convicted of any felony drug offense in the Commonwealth or a like violation of the laws of another state, the United States or foreign jurisdiction, or a military, territorial or Native American tribal authority;

(c) Have not been convicted of any offense involving the distribution of controlled substances to a minor or a like violation of the laws of another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority; and

(d) Be determined to be suitable for registration consistent the provisions of 935 CMR 500.800 and 500.803.

(2) An application for registration of a Laboratory Agent submitted to the Commission by an Independent Testing Laboratory shall include:

(a) The full name, date of birth, and address of the individual;

(b) All aliases used previously or currently in use by the individual, including maiden name, if any;

(c) A copy of the applicant's driver's license, government-issued identification card, liquor purchase identification card issued pursuant to M.G.L. c. 138 § 34B, or other verifiable identity document acceptable to the Commission;

(d) An attestation signed by the applicant that the applicant will not engage in the diversion of marijuana products;

(e) Written acknowledgment signed by the applicant of any limitations on his or her authorization to possess, test or transport marijuana products in the Commonwealth;

(f) Authorization to obtain a full set of fingerprints, in accordance with M.G.L. c. 94G, § 21, submitted in a form and manner as determined by the Commission;

(g) Background information, including, as applicable:

1. a description and the relevant dates of any criminal action under the laws of the Commonwealth, or another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority, whether for a felony or misdemeanor and which resulted in conviction, or guilty plea, or plea of *nolo contendere*, or admission of sufficient facts;

2. a description and the relevant dates of any civil or administrative action under the laws of the Commonwealth, another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority relating to any professional or occupational or fraudulent practices;

3. a description and relevant dates of any past or pending denial, suspension, or revocation of a license or registration, or the denial of a renewal of a license or registration, for any type of business or profession, by any federal, state, or local government, or any foreign jurisdiction;

4. a description and relevant dates of any past discipline by, or a pending disciplinary action or unresolved complaint by, the Commonwealth, or a like action or complaint by another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority with regard to any professional license or registration held by the applicant;

5. a nonrefundable application fee paid by the Marijuana Establishment with which the marijuana establishment agent will be associated; and

6. any other information required by the Commission.

(3) An Independent Testing Laboratory executive registered with the Massachusetts Department of Criminal Justice Information Systems pursuant to 803 CMR 2.04: *iCORI Registration* shall submit to the Commission a Criminal Offender Record Information (CORI) report and any other background check information required by the Commission for each individual for whom the Independent Testing Laboratory seeks a laboratory agent registration, obtained within 30 days prior to submission.

500.029: continued

(4) The Commission shall conduct fingerprint-based checks of state and national criminal history databases, as authorized by Public Law 92-544, to determine the suitability of Laboratory Agents. The Independent Testing Laboratory shall pay a non-refundable fee to the Commission for the purpose of administering the fingerprint-based background check.

(5) An Independent Testing Laboratory shall notify the Commission no more than one business day after a laboratory agent ceases to be associated with the Independent Testing Laboratory. The laboratory agent's registration shall be immediately void when the agent is no longer associated with the Independent Testing Laboratory.

(6) A registration card shall be valid for one year from the date of issue, and may be renewed on an annual basis upon a determination by the Commission that the applicant for renewal continues to be suitable for registration based upon satisfaction of the requirements included in 935 CMR 500.800 and 500.803.

(7) After obtaining a registration card for a laboratory agent, an Independent Testing Laboratory is responsible for notifying the Commission, in a form and manner determined by the Commission, as soon as possible, but in any event, within five business days of any changes to the information that the Independent Testing Laboratory was previously required to submit to the Commission or after discovery that a registration card has been lost or stolen.

(8) A laboratory agent shall carry the registration card associated with the appropriate Independent Testing Laboratory at all times while in possession of marijuana products, including at all times while at an Independent Testing Laboratory or while transporting marijuana products.

(9) A laboratory agent affiliated with multiple Independent Testing Laboratories shall be registered as a laboratory agent by each Independent Testing Laboratory and shall be issued a registration card for each lab.

(10) Laboratory agents are strictly prohibited from receiving direct or indirect financial compensation from any Marijuana Establishment for which the laboratory agent is conducting testing, other than reasonable contract fees paid for conducting the testing in the due course of work.

(11) Laboratory agents shall not be employed by other types of Marijuana Establishments while employed as a laboratory agent at one or more Independent Testing Laboratories.

500.030: Registration of Marijuana Establishment Agents

(1) A Marijuana Establishment shall apply for registration for all of its board members, directors, employees, executives, managers, and volunteers who are associated with that Marijuana Establishment. The Commission shall issue a registration card to each individual determined to be suitable for registration. All such individuals shall:

(a) be 21 years of age or older;

(b) not been convicted of an offense in the Commonwealth involving the distribution of controlled substances to minors, or a like violation of the laws of another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority; and

(c) be determined suitable for registration consistent with the provisions of 935 CMR 500.800 and 500.802.

(2) An application for registration of a marijuana establishment agent shall include:

(a) the full name, date of birth, and address of the individual;

(b) all aliases used previously or currently in use by the individual, including maiden name, if any;

(c) a copy of the applicant's driver's license, government-issued identification card, liquor purchase identification card issued pursuant to M.G.L. c. 138, § 34B, or other verifiable identity document acceptable to the Commission;

(d) an attestation that the individual will not engage in the diversion of marijuana products;

500.030: continued

(e) written acknowledgment by the applicant of any limitations on his or her authorization to cultivate, harvest, prepare, package, possess, transport, and dispense marijuana in the Commonwealth;

(f) background information, including, as applicable:

1. a description and the relevant dates of any criminal action under the laws of the Commonwealth, or another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority, whether for a felony or misdemeanor and which resulted in conviction, or guilty plea, or plea of *nolo contendere*, or admission of sufficient facts;

2. a description and the relevant dates of any civil or administrative action under the laws of the Commonwealth, another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority relating to any professional or occupational or fraudulent practices;

3. a description and relevant dates of any past or pending denial, suspension, or revocation of a license or registration, or the denial of a renewal of a license or registration, for any type of business or profession, by any federal, state, or local government, or any foreign jurisdiction;

4. a description and relevant dates of any past discipline by, or a pending disciplinary action or unresolved complaint by, the Commonwealth, or a like action or complaint by another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority with regard to any professional license or registration held by the applicant; and

(g) a nonrefundable application fee paid by the Marijuana Establishment with which the marijuana establishment agent will be associated; and

(h) any other information required by the Commission.

(3) A Marijuana Establishment executive registered with the Department of Criminal Justice Information Systems pursuant to 803 CMR 2.04: *iCORI Registration*, shall submit to the Commission a Criminal Offender Record Information (CORI) report and any other background check information required by the Commission for each individual for whom the Marijuana Establishment seeks a marijuana establishment agent registration, obtained within 30 days prior to submission.

(4) A Marijuana Establishment shall notify the Commission no more than one business day after a marijuana establishment agent ceases to be associated with the establishment. The registration shall be immediately void when the agent is no longer associated with the establishment.

(5) A registration card shall be valid for one year from the date of issue, and may be renewed on an annual basis upon a determination by the Commission that the applicant for renewal continues to be suitable for registration.

(6) After obtaining a registration card for a marijuana establishment agent, a Marijuana Establishment is responsible for notifying the Commission, in a form and manner determined by the Commission, as soon as possible, but in any event, within five business days of any changes to the information that the establishment was previously required to submit to the Commission or after discovery that a registration card has been lost or stolen.

(7) A marijuana establishment agent shall carry the registration card associated with the appropriate Marijuana Establishment at all times while in possession of marijuana products, including at all times while at the establishment or while transporting marijuana products.

(8) A marijuana establishment agent affiliated with multiple Marijuana Establishments shall be registered as a marijuana establishment agent by each Marijuana Establishment and shall be issued a registration card for each establishment.

500.031: Denial of a Registration Card

Each of the following, in and of itself, constitutes full and adequate grounds for denial of a registration card for marijuana establishment agent, including laboratory agents:

(1) Failure to provide the information required in 935 CMR 500.029 or 935 CMR 500.030 for a registration card;

(2) Provision of misleading, incorrect, false, or fraudulent information on the applicatiou;

(3) Failure to meet the requirements set forth in 935 CMR 500.029 or 935 CMR 500.030 for a registration card;

(4) Revocation or suspension of a registration card in the previous six months;

(5) Failure by the Marijuana Establishment to pay all applicable fees; or

(6) Other grounds, as the Commission may determine in the exercise of its discretion, that are directly related to the applicant's ability to serve as a marijuana establishment agent, or that make the applicant unsuitable for registration, however, the Commission will provide notice to the applicant of the grounds prior to the denial of the registration card and a reasonable opportunity to correct these grounds.

(a) The Commission may delegate registrants' suitability determinations to the Executive Director, who may appoint a Suitability Review Committee, in accordance with 935 CMR 500.800. Suitability determinations shall be based on credible and reliable information.

(b) The Commission will provide notice to the registrant of the grounds prior to the denial of a registration card and a reasonable opportunity to correct these grounds. Upon recommendation by the committee, the Executive Director may determine that an individual suitability determination warrants the Commission's consideration and make a recommendation to the Commission with regards to this determination.

500.032: Revocation of a Marijuana Establishment Agent Registration Card

(1) Each of the following, in and of itself, constitutes full and adequate grounds for revocation of a registration card issued to a marijuana establishment agent, including laboratory agents:

(a) Submission of misleading, incorrect, false, or fraudulent information in the application or renewal application;

(b) Violation of the requirements of the state marijuana laws, including 935 CMR 500.000;

(c) Fraudulent use of a marijuana establishment agent registration card;

(d) Selling, distributing, or giving marijuana to any unauthorized person;

(e) Tampering, falsifying, altering, modifying, duplicating, or allowing another person to use, tamper, falsify, alter, modify, or duplicate a marijuana establishment agent registration card;

(f) Failure to notify the Commission within five business days after becoming aware that the registration card has been lost, stolen, or destroyed;

(g) Failure to notify the Commission within five business days after a change in the registration information contained in the application or required by the Commission to have been submitted in connection with the application for a marijuana establishment agent registration card, including open investigations or pending actions as delineated in 935 CMR 500.802, as applicable, that may otherwise affect the status of the suitability for registration of the marijuana establishment agent;

(h) Conviction, guilty plea, plea of *nolo contendere*, or admission to sufficient facts of a felony drug offense involving distribution to a minor in the Commonwealth, or a like violation of the laws of another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority; or

(i) Conviction, guilty plea, plea of *nolo contendere* or admission to sufficient facts in the Commonwealth, or a like violation of the laws of another state, to an offense as delineated in 935 CMR 500.802 or 935 CMR 500.803, as applicable, that may otherwise affect the status of the suitability for registration of the marijuana establishment agent.

500.032: continued

(2) Other grounds as the Commission may determine in the exercise of its discretion, that are directly related to the applicant's ability to serve as a marijuana establishment agent, that make the registrant unsuitable for registration.

(a) The Commission may delegate registrants' suitability determinations to the Executive Director, who may appoint a Suitability Review Committee, in accordance with 935 CMR 500.800. Suitability determinations shall be based on credible and reliable information.

(b) The Commission will provide notice to the registrant of the grounds prior to the revocation of a registration card and a reasonable opportunity to correct these grounds.

(c) Upon recommendation by the committee, the Executive Director may determine that an individual suitability determination warrants the Commission's consideration and make a recommendation to the Commission with regards to this determination.

500.033: Void Registration Cards

(1) A registration card issued to a Marijuana Establishment Agent, including a laboratory agent, shall be void when:

(a) the agent has ceased to be associated with the Marijuana Establishment or Independent Testing Laboratory that applied for and received the agent's registration card;

(b) the card has not been surrendered upon the issuance of a new registration card based on new information; or

(c) the agent is deceased.

(2) A void registration card is inactive.

500.040: Leadership Rating Program for Marijuana Establishments and Marijuana-related Businesses

(1) Leadership Rating Categories. In a time and manner to be determined by the Commission, licensees will be eligible to earn leadership ratings in the following categories:

(a) Social Justice Leader

(b) Local Employment Leader

(c) Energy and Environmental Leader

(d) Compliance Leader

(2) Leadership Rating Application.

(a) Marijuana Establishments annually submit information, in a time and manner determined by the Commission, demonstrating their eligibility for the applicable leadership rating.

(b) All information submitted is subject to verification and audit by the Commission prior to the award of a leadership rating.

(c) Award of a leadership rating in one year does not entitle the applicant to a leadership rating for any other year.

(3) Leadership Rating Criteria.

(a) Social Justice Leader. In the year preceding the date of application for a leadership rating:

1. One percent of the Marijuana Establishment's gross revenue is donated to the Social Equity Training and Technical Assistance Fund; and

2. The licensee has conducted 50 hours of educational seminars targeted to residents of areas of disproportionate impact in one or more of the following: marijuana cultivation, marijuana product manufacturing, marijuana retailing, or marijuana business training.

A Social Justice Leader may use a logo or symbol created by the Commission to indicate its leadership status.

(b) Local Employment Leader. In the year preceding the date of application for a leadership rating:

1. 51% or more of the licensee's employees have been a Massachusetts resident for 12 months or more, as determined by the Commission; and

2. 51% or more of the licensee's executives have been a Massachusetts resident for 12 months or more, as determined by the Commission.

500.040: continued

(c) Energy and Environmental Leader. In the year preceding the date of application for a leadership rating:

1. The licensee has met or exceeded its energy and environmental impact goals for its registration period;
2. The licensee has consistently documented and complied with best management practices for energy use, waste disposal and environmental impact;
3. The licensee has documented that renewable energy credits representing 100% of the licensee's energy usage have been retired; and
4. The licensee has labeled all their products as being produced using 100% renewable energy.

(d) Compliance Leader. In the year preceding the date of application for a leadership rating:

1. All licensee employees have completed all required trainings for their positions within 90 days of hire;
2. The licensee has not been issued a written deficiency statement;
3. The licensee has not been the subject of a cease and desist order or a quarantine order;
4. The licensee has not had its license suspended; and
5. The licensee has met all timelines required by the Commission.

(4) Leadership ratings will be taken into consideration by the Commission in assessing fines pursuant to 935 CMR 500.550 and disciplinary action pursuant to 935 CMR 500.450.

500.050: Marijuana Establishments

(1) General Requirements.

(a) A Marijuana Establishment is required to be registered to do business in the Commonwealth as a domestic business corporation or another domestic business entity in compliance with 935 CMR 500.000 and to maintain the corporation in good standing with the Secretary of the Commonwealth and DOR.

(b) No licensee shall be granted more than three licenses in a particular class, except as otherwise specified in 935 CMR 500.000. An Independent Testing Laboratory or Standards Laboratory may not have a license in any other class. No individual or entity shall be a controlling person over more than three licenses in a particular class of license. No individual, corporation or other entity shall be in a position to control the decision-making of more than three licenses in a particular class of license. An individual, corporation or entity shall be determined to be in a position to control the decision-making of a Marijuana Establishment if the individual or entity possesses:

1. actual control of more than 50% of the voting equity or has the power to appoint more than 50% of the directors;
2. contract rights to control; or
3. right to veto significant events.

The Commission shall receive notice of any such interests as part of the application pursuant to 935 CMR 500.100.

(c) An individual licensee shall be limited to 100,000, square feet of canopy per licensee, for a total of three licenses. A Craft Marijuana Cooperative is subject to this same limit.

(d) License Classes are as follows:

1. Marijuana Cultivator:
   a. Tier 1: up to 5,000 square feet of canopy;
   b. Tier 2: 5,001 to 10,000 square feet of canopy;
   c. Tier 3: 10,001 to 20,000 square feet of canopy;
   d. Tier 4: 20,001 to 30,000 square feet of canopy;
   e. Tier 5: 30,001 to 40,000 square feet of canopy;
   f. Tier 6: 40,001 to 50,000 square feet of canopy;
   g. Tier 7: 50,001 to 60,000 square feet of canopy;
   h. Tier 8: 60,001 to 70,000 square feet of canopy;
   i. Tier 9: 70,001 to 80,000 square feet of canopy;
   j. Tier 10: 80,001 to 90,000 square feet of canopy; or
   k. Tier 11: 90,001 to 100,000 square feet of canopy.
2. Craft Marijuana Cooperative;
3. Marijuana Product Manufacturer;

500.050: continued

4. Marijuana Retailer;
5. Marijuana Research Facility;
6. Independent Testing Laboratory and Standards Laboratory.
7. Marijuana Transporter:
   a. Existing Licensing Transporter;
   b. Third Party Transporter; and
8. Marijuana Microbusiness.

(e) A Marijuana Establishment shall operate all activities authorized by the license only at the address(es) registered with the Commission for that license.

(f) All marijuana establishment agents of the Marijuana Establishment must be registered with the Commission pursuant to 935 CMR 500.030.

(2) Marijuana Cultivator.

(a) A Marijuana Cultivator may cultivate, process and package marijuana, to transport marijuana to Marijuana Establishments and to transfer marijuana to other Marijuana Establishments, but not to consumers.

(b) Marijuana Cultivators shall select a cultivation tier. Cultivation tiers are based on the square footage of canopy:

1. Tier 1: up to 5,000;
2. Tier 2: 5,001 to 10,000;
3. Tier 3: 10,001 to 20,000;
4. Tier 4: 20,001 to 30,000;
5. Tier 5: 30,001 to 40,000;
6. Tier 6: 40,001 to 50,000;
7. Tier 7: 50,001 to 60,000;
8. Tier 8: 60,001 to 70,000;
9. Tier 9: 70,001 to 80,000;
10. Tier 10: 80,001 to 90,000; or
11. Tier 11: 90,001 to 100,000.

(c) Tier Expansion. A Marijuana Cultivator may submit an application, in a time and manner determined by the Commission, to change the tier in which it is classified. A Marijuana Cultivator may change tiers to either expand or reduce production. If a Marijuana Cultivator is applying to expand production, it must demonstrate that while cultivating at the top of its production tier, it has sold 85% of its product consistently over the six months preceding the application for expanded production.

(d) Tier Relegation. In connection with the license renewal process for Marijuana Cultivators, the Commission will review the records of the Marijuana Cultivator during the six months prior to the application for renewal. The Commission may reduce the licensee's maximum canopy to a lower tier if the licensee sold less than 70% of what it produced during the six months prior to the application for renewal. When determining whether to relegate a licensee to a lower tier, the Commission may consider the following factors, including but not limited to:

1. Cultivation and production history including whether the plants/inventory suffered a catastrophic event during the licensing period;
2. Transfer, sales, and excise tax payment history;
3. Existing inventory and inventory history;
4. Sales contracts; and
5. Any other factors relevant to ensuring responsible cultivation, production, and inventory management.

(3) Craft Marijuana Cooperative.

(a) A Craft Marijuana Cooperative may be organized as a limited liability company, limited liability partnership, or a cooperative corporation under the laws of the Commonwealth.

(b) The members or shareholders of the cooperative must be residents of the Commonwealth for the 12 months immediately preceding the filing of an application for a license.

(c) One member of the Craft Marijuana Cooperative shall have filed a Schedule F tax income form within the five years prior to application for licensure.

500.050: continued

(d) The Craft Marijuana Cooperative must operate consistently with the Seven Cooperative Principles established by the International Cooperative Alliance in 1995.
(e) The cooperative license authorizes it to cultivate, obtain, manufacture, process, package and brand marijuana products to deliver marijuana to Marijuana Establishments, but not to consumers.
(d) The Craft Marijuana Cooperative is limited to one license, under which it may cultivate marijuana, subject to the limitations of 935 CMR 500.050(2). The cooperative's total locations are limited to cultivating 100,000 square feet of canopy. A cooperative is not limited in the number of cultivation locations it may operate, provided that for each location over six locations, additional application and licensing fees shall apply pursuant to 935 CMR 935 CMR 500.050(3)(d). The cooperative may also conduct activities authorized for Marijuana Product Manufacturers at up to three locations.
(e) For the electronic seed-to-sale tracking system, a cooperative that designates a system administrator will pay one licensing program fee on a monthly basis for seed-to-sale tracking software.
(f) Members of a cooperative shall not have a controlling interest in any other Marijuana Establishment.
(g) Tier Expansion. A Craft Marijuana Cooperative may submit an application, in a time and manner determined by the Commission, to change the tier in which it is classified. A cooperative may change tiers to either expand or reduce production. If a cooperative is applying to expand production, it must demonstrate that while cultivating at the top of its production tier, it has sold 85% of its product consistently over the six months preceding the application for expanded production.
(h) Tier Relegation. In connection with the license renewal process for Craft Marijuana Cooperatives, the Commission will review the records of the cooperative during the six months prior to the application for renewal. The Commission may reduce the licensee's maximum canopy to a lower tier if the licensee sold less than 70% of what it produced during the six months prior to the application for renewal. When determining whether to relegate a licensee to a lower tier, the Commission may consider the following factors including but not limited to:

1. Cultivation and production history including whether the plants/inventory suffered a catastrophic event during the licensing period;
2. Transfer, sales, and excise tax payment history;
3. Existing inventory and inventory history;
4. Sales contracts; and
5. Any other factors relevant to ensuring responsible cultivation, production, and inventory management.

(4) Marijuana Product Manufacturer. A Marijuana Product manufacturer may obtain, manufacture, process and package marijuana products, to transport marijuana products to Marijuana Establishments and to transfer marijuana products to other Marijuana Establishments, but not to consumers.

(5) Marijuana Retailer.
(a) General Requirements.
1. A Marijuana Retailer may purchase and transport marijuana products from Marijuana Establishments and to transport, sell or otherwise transfer marijuana products to Marijuana Establishments and to consumers. A retailer cannot deliver marijuana products to consumers or allow on-site social consumption by consumers on the premises of the Marijuana Establishment.
2. A retailer shall operate all marijuana-related activities solely at the address identified in the license.
(b) Marijuana Retailer. A Marijuana Retailer providing a retail location accessible to consumers 21 years of age or older or in possession of a medical registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program.

500.050: continued

(6) Marijuana Research Facility.
(a) A Marijuana Research Facility may cultivate, purchase or otherwise acquire marijuana for the purpose of conducting research regarding marijuana products.
(b) A research facility may be an academic institution, nonprofit corporation or domestic corporation or entity authorized to do business in the Commonwealth.
(c) Any research involving humans must be authorized by an Institutional Review Board.
(d) A research facility may not sell marijuana cultivated under its research license.
(e) All research regarding marijuana must be conducted by individuals 21 years of age or older.

(7) Independent Testing Laboratory.
(a) An Independent Testing Laboratory shall be:
1. Accredited to International Organization for Standardization (ISO) 17025 (ISO/IEC 17025: 2017) by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement; or
2. Certified, registered, or accredited by an organization approved by the Commission.
(b) An executive or member of a Marijuana Establishment is prohibited from having any financial or other interest in an Independent Testing Laboratory providing testing services for any Marijuana Establishment;
(c) No individual employee of a laboratory providing testing services for Marijuana Establishments may receive direct or indirect financial compensation from any Marijuana Establishment;
(d) Standards Laboratory. A laboratory meeting the requirements of the Independent Testing Laboratory may be licensed as a Standards Laboratory to ensure consistent and compliant testing by the Independent Testing Laboratories. An Independent Testing Laboratory may not serve as a Standards Laboratory.
1. Upon request by the Commission, a Standards Laboratory shall test samples of marijuana products in a time and manner to be determined by the Commission.
2. Testing shall be performed in a manner determined by the Commission so as not to reveal to the laboratory the source of the marijuana products.
3. The Standards Laboratory shall submit the results of testing to the Commission for review.
4. The Standards Laboratory shall retain the marijuana products tested pursuant to 935 CMR 500.050(7)(d)1., until directed to transfer or dispose of them by the Commission. Any disposal shall take place in compliance with 935 CMR 500.105(12).

(8) Marijuana Transporter.
(a) An entity may only transport marijuana products when such transportation is not already authorized under a Marijuana Establishment license if it is licensed as a Marijuana Transporter:
1. Third-party Transporter. An entity registered to do business in Massachusetts that does not hold another Marijuana Establishment license pursuant to 935 CMR 500.050 and is not registered as a RMD pursuant to 105 CMR 725.000: *Implementation of an Act for the Humanitarian Medical Use of Marijuana.*
2. Existing Licensee Transporter. A Marijuana Establishment that wishes to contract with other Marijuana Establishments to transport their marijuana products to other Marijuana Establishments.
(b) All Marijuana Transporter, their agents and employees, who contract with a Marijuana Establishment to transport marijuana products must comply with St. 2016, c. 334, as amended by St. 2017, c. 55 and 935 CMR 500.000.
(c) Marijuana Transporters will be allowed to warehouse marijuana products in a form and manner determined by the Commission.

(9) Marijuana Microbusiness.
(a) A Microbusiness is a colocated Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

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(b) A Microbusiness shall comply with all operational requirements imposed by 935 CMR 500.105 through 935 CMR 500.140 on Marijuana Cultivators and Manufacturers, to the extent the licensee engages in such activities.
(c) A Microbusiness licensee shall not have an ownership stake in any other Marijuana Establishment and a majority of its executives or members must have been residents of Massachusetts for no less than 12 months prior to application is eligible to apply for a Microbusiness license.
(d) Application fees and license fees for Microbusinesses shall be set at 50% of the combined sum of the application fees and license fees for all of the cultivation or manufacturing activities in which the licensee engages.

500.100: Application for Licensing of Marijuana Establishments

500.101: Application Requirements

(1) New Applicants. An applicant in any category of Marijuana Establishmeut shall file, in a form and manner specified by the Commission, an application for licensure as a Marijuana Establishment. The application shall consist of three packets: an Application of Intent packet; a Background Check packet; and a Management and Operations Profile packet. The applicant may file individual packets separately or as a whole. The application will not be considered to be complete until the Commission determines each individual packet is complete and notifies the applicant that each packet is complete.

(a) Application of Intent. An applicant for licensure as a Marijuana Establishment shall submit the following as part of the Application of Intent:

1. Documentation that the Marijuana Establishment is an entity registered to do business in Massachusetts and a list of all executives, managers, persons or entities having direct or indirect authority over the management, policies, security operations or cultivation operations of the Marijuana Establishment; close associates and members of the applicant, if any; and a list of all persons or entities contributing 10% or more of the initial capital to operate the Marijuana Establishment including capital that is in the form of land or buildings;
2. A disclosure of an interest of each individual named in the application in any Marijuana Establishment application for licensure or licensee;
3. Documentation disclosing whether the Marijuana Establishments and its owners have past or present business interests in other states.
4. Documentation detailing the amounts and sources of capital resources available to the applicant from any individnal or entity that will be contributing capital resources to the applicant for purposes of establishing or operating the identified Marijuana Establishment for each license applied for. Information submitted shall be subject to review and verification by the Commission as a component of the application process. Required documentation shall:
    a. The proper name of any individual or registered business name of any entity;
    b. The street address, provided, however that the address shall not be a post office box;
    c. The primary telephone number;
    d. Electronic mail;
    e. The amount and source of capital provided or promised;
    f. A bank record dated within 30 days of the application verifying the existence of capital; and
    g. Certification that funds used to invest in or finance the Marijuana Establishment were lawfully earned or obtained.
5. Documentation of a bond or other resources held in an escrow account in an amount sufficient to adequately support the dismantling and winding down of the Marijuana Establishment;
6. Identification of the proposed address for the license;
7. Documentation of a property interest in the proposed address. Interest may be demonstrated by one of the following:
    a. Clear legal title to the proposed site;
    b. An option to purchase the proposed site;

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d. A legally enforceable agreement to give such title; or

e. Binding permission to use the premises.

8. Documentation in the form of a single-page certification signed by the contracting authorities for the municipality and applicant evidencing that the applicant for licensure and host municipality in which the address of the Marijuana Establishment is located have executed a host community agreement;

9. Documentation that the applicant has conducted a community outreach meeting consistent with the Commission's *Guidance for License Applicants on Community Outreach* within the six months prior to the application. Documentation must include:

a. Copy of a notice of the time, place and subject matter of the meeting, including the proposed address of the Marijuana Establishment, that was published in a newspaper of general circulation in the city or town at least seven calendar days prior to the meeting;

b. Copy of the meeting notice filed with the city or town clerk, the planning board, the contracting authority for the municipality, and local licensing authority for the adult use of marijuana, if applicable;

c. Attestation that notice of the time, place and subject matter of the meeting, including the proposed address of the Marijuana Establishment, was mailed at least seven calendar days prior to the community outreach meeting to abutters of the proposed address of the Marijuana Establishment, and residents within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town;

d. Information presented at the community outreach meeting, which shall include, but not be limited to:

i. The type(s) of Marijuana Establishment to be located at the proposed address;

ii. Information adequate to demonstrate that the location will be maintained securely;

iii. Steps to be taken by the Marijuana Establishment to prevent diversion to minors;

iv. A plan by the Marijuana Establishment to positively impact the community;

v. Information adequate to demonstrate that the location will not constitute a nuisance as defined by law; and

vi. An attestation that community members were permitted to ask questions and receive answers from representatives of the Marijuana Establishment.

10. A description of plans to ensure that the Marijuana Establishment is or will be compliant with local codes, ordinances, and bylaws for the physical address of the Marijuana Establishment which shall include, but not be limited to, the identification of any local licensing requirements for the adult use of marijuana;

11. A plan by the Marijuana Establishment to positively impact areas of disproportionate impact, as defined by the Commission;

12. The requisite non-refundable application fee pursuant to 935 CMR 500.005; and

13. Any other information required by the Commission.

(b) Background Check. Prior to an application being considered complete, each applicant for licensure must submit the following information:

1. The list of individuals and entities in 935 CMR 500.101(1)(a)1.;

2. Information for each individual identified in 935 CMR 500.101(1)(a)1., which shall include:

a. The individual's full legal name and any aliases;

b. The individual's address;

c. The individual's date of birth;

d. A photocopy of the individual's driver's license or other government-issued identification card;

e. A CORI Acknowledgment Form, pursuant to 803 CMR 2.09: *Requirements for Requestors to Request CORI*, provided by the Commission, signed by the individual and notarized;

f. Authorization to obtain a full set of fingerprints, in accordance with M.G.L. c. 94G, § 21, submitted in a form and manner as determined by the Commission;

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3. Relevant Background Check Information. Applicants for licensure will also be required to information detailing involvement in any criminal or civil or administrative matters:

a. A description and the relevant dates of any criminal action under the laws of the Commonwealth, or another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority, whether for a felony or misdemeanor including, but not limited to, action against any health care facility or facility for providing marijuana for medical or recreational purposes, in which those individuals either owned shares of stock or served as board member, executive, officer, director or member, and which resulted in conviction, or guilty plea, or plea of *nolo contendere*, or admission of sufficient facts;

b. A description and the relevant dates of any civil action under the laws of the Commonwealth, another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority, including, but not limited to a complaint relating to any professional or occupational or frandnlent practices;

c. A description and relevant dates of any past or pending legal or enforcement actions in any other state against any board member, executive, officer, director or member, or against any entity owned or controlled in whole or in part by them, related to the cultivation, processing, distribution, or sale of marijuana for medical or recreational purposes;

d. A description and the relevant dates of any administrative action, including any complaint, order or disciplinary action, by the Commonwealth, or like action by another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority, including, but not limited to any complaint or issuance of an order relating to the denial, suspension, or revocation of a license, registration, or certification;

e. A description and relevant dates of any administrative action, including any complaint, order or disciplinary action, by the Commonwealth, or a like action by another state, the United States or foreign jurisdiction, or a military, territorial, Native American tribal authority or foreign jurisdiction, with regard to any professional license, registration, or certification, held by any board member, executive, officer, director, or member that is part of the applicant's application, if any;

f. A description and relevant dates of actions against a license to prescribe or distribute controlled substances or legend drugs held by any board member, executive, officer, director or member that is part of the applicant's application, if any; and

g. Any other information required by the Commission.

(c) Management and Operations Profile. Each applicant shall submit, with respect to each application, a response in a form and manner specified by the Commission, which includes:

1. Detailed information regarding its business registration with the Commonwealth, including the legal name, a copy of the articles of organization and bylaws;

2. A certificate of good standing from the Corporations Division of the Secretary of the Commonwealth;

3. A certificate of good standing or certificate of tax compliance from the DOR;

4. A proposed timeline for achieving operation of the Marijuana Establishment and evidence that the Marijuana Establishment will be ready to operate within the proposed timeline after notification by the Commission that the applicant qualifies for licensure;

5. A description of the Marijuana Establishment's plan to obtain a liability insurance policy or otherwise meet the requirements of 935 CMR 500.105(10);

6. A detailed summary of the business plan for the Marijuana Establishment;

7. A detailed summary of operating policies and procedures for the Marijuana Establishment which shall include, but not be limited to provisions for:

a. security;
b. prevention of diversion;
c. storage of marijuana;
d. transportation of marijuana, if applicable to license type;
e. inventory procedures;

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f. procedures for quality control and testing of product for potential contaminants, if applicable to license type;
g. personnel policies;
h. dispensing procedures;
i. record-keeping procedures;
j. maintenance of financial records; and
k. diversity plans to promote equity among minorities, women, veterans, people with disabilities, and people of all gender identities and sexual orientation, in the operation of the Marijuana Establishment.

8. A detailed description of qualifications and intended training(s) for marijuana establishment agents who will be employees; and

9. The Management and Operation Profile submitted in accordance with 935 CMR 500.101(1)(c)9. shall demonstrate compliance with the operational requirements set forth in 935 CMR 500.105 through 935 CMR 500.140, as applicable.

10. Any other information required by the Commission.

(d) Additional Specific Requirements.

1. In addition to the requirements set forth in 935 CMR 500.101(1)(c), applicants for a license to operate a Marijuana Establishment for retail shall also provide, as part of the Management and Operation Profile packet, a detailed description of the Marijuana Establishment's proposed plan for obtaining marijuana products from a licensed Marijuana Establishment(s).

2. In addition to the requirements set forth in 935 CMR 500.101(1)(c), applicants for a license to operate Marijuana Establishment for cultivation shall also provide as part of the Management and Operation Profile packet an operational plan for the cultivation of marijuana, including a detailed summary of the policies and procedures for cultivation.

3. In addition to the requirements set forth in 935 CMR 500.101(1)(c), applicants for a license to operate a Marijuana Establishment for product manufacturing shall also provide, as part of the Management and Operation Profile packet:

a. a description of the types and forms of marijuana products that the Marijuana Establishment intends to produce;
b. the methods of production; and
c. a sample of any unique identifying mark that will appear on any product produced by the applicant as a branding device.

4. In addition to the requirements set forth in 935 CMR 500.101(1)(c), applicants for a license to operate a Marijuana Establishment as a Microbusiness shall also provide, as part of the Application of Intent, evidence of residency within the Commonwealth for a period of 12 consecutive months prior to the date of application.

5. In addition to the requirements set forth in 935 CMR 500.101(1)(c), applicants for a license to operate a Marijuana Establishment as a Craft Marijuana Cooperative shall also provide, as part of the Application of Intent:

a. Evidence of residency within the Commonwealth for a period of 12 consecutive months prior to the date of application;
b. Evidence of the cooperative's organization as a limited liability company or limited liability partnership, or a cooperative corporation under the laws of the Commonwealth;
c. Evidence that one member has filed a Schedule F tax income form within the past five years; and;
d. Evidence that the cooperative is organized to operate consistently with the Seven Cooperative Principles established by the International Cooperative Alliance in 1995.

(e) Eligibility as an Economic Empowerment Applicant.

1. An applicant who intends to file an application for licensure as an Economic Empowerment Applicant shall file, in a form and manner specified by the Commission, a request for certification as an Economic Empowerment Applicant. The request for certification shall be in addition to the requirements included in 935 CMR 500.101(1)(a) through (d).

2. The request for certification as an Economic Empowerment Applicant shall be evaluated by the Commission pursuant to 935 CMR 500.102(1)(b), where an applicant has demonstrated three or more of the following criteria:

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a. A majority of ownership belongs to people who have lived for five of the preceding ten years in an area of disproportionate impact, as determined by the Commission;
b. A majority of ownership has held one or more previous positions where the primary population served were disproportionately impacted, or where primary responsibilities included economic education, resource provision or empowerment to disproportionately impacted individuals or communities;
c. At least 51% of current employees or subcontractors reside in areas of disproportionate impact and by the first day of business, the ratio will meet or exceed 75%;
d. At least 51% or employees or subcontractors have drug-related CORI and are otherwise legally employable in cannabis enterprises;
e. A majority of the ownership is made up of individuals from Black, African American, Hispanic or Latino descent;
f. Other significant articulable demonstration of past experience in or business practices that promote economic empowerment in areas of disproportionate impact.

(2) RMD Applicants.

(a) The application for an RMD priority applicant intending to operate an adult-use Marijuana Establishment shall consist of three packets: An Application of Intent packet; a Background Check packet; and a Management and Operations Profile packet. Applicants for licensure under 935 CMR 500.102(2) shall be required to provide the information required, to the extent that the required information does not qualify as specific information previously required, analyzed, approved and recognized by the DPH. An applicant may file individual packets separately or as a whole. An application will not be considered complete by the Commission until each individual packet is determined by the Commission to be complete and the applicant has been notified. Applicants shall be determined to have achieved accreditation status if, according to the records of the certifying agency, the applicant:

1. is a RMD that has received a Final Certificate of Registration and is selling marijuana or marijuana-infused products as of the date of application;
2. is a RMD that has received a Final Certificate of Registration, but is not selling marijuana or marijuana-infused products as of the date of application; or
3. is a RMD that has received a Provisional Certificate of Registration, but not a Final Certificate of Registration.

(b) Application of Intent Packet. An RMD Applicant for licensure as an adult-use Marijuana Establishment shall submit the following as part of the application of intent:

1. A list of all executives, managers, persons or entities having direct or indirect authority over the management, policies, security operations or cultivation operations of the adult-use Marijuana Establishment not currently included on the RMD license; close associates and members of the applicant, if any; and a list of all persons or entities contributing 10% or more of the initial capital to operate the Marijuana Establishment including capital that is in the form of land or buildings;
2. A disclosure of an interest of each individual named in the application in any Marijuana Establishment application for licensure or licensee;
3. Documentation disclosing whether the Marijuana Establishments and its owners have past or present business interests in the other states;
4. Identification of the proposed address for the license;
5. Documentation of a property interest in the proposed address, if different than the location identified in the existing RMD license. Interest may be demonstrated by one of the following:
   a. Clear legal title to the proposed site;
   b. An option to purchase the proposed site;
   c. A lease;
   d. A legally enforceable agreement to give such title; or
   e. Binding permission to use the premises.

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6. Documentation in the form of a single-page certification signed by the contracting authorities for the municipality and applicant evidencing that the applicant for licensure and host municipality in which the address of the adult-use Marijuana Establishment is located have executed a host-community agreement specific to the adult-use Marijuana Establishment;

7. Documentation that the applicant has conducted a community outreach meeting consistent with the Commission's *Guidance for License Applicants on Community Outreach* within the six months prior to the application. Documentation must include:

a. Copy of a notice of the time, place and subject matter of the meeting, including the proposed address of the adult-use Marijuana Establishment, that was published in a newspaper of general circulation in the city or town at least seven calendar days prior to the meeting;

b. Copy of the meeting notice filed with the city or town clerk, the planning board, the contracting authority for the municipality, and local licensing authority for the adult use of marijuana, if applicable;

c. Attestation that notice of the time, place and subject matter of the meeting, including the proposed address of the Marijuana Establishment, was mailed at least seven calendar days prior to the community outreach meeting to abutters of the proposed address of the Marijuana Establishment, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town;

d. Information presented at the community outreach meeting, which must include, but not be limited to:

i. The type(s) of adult-use Marijuana Establishment to be located at the proposed address;

ii. If physically separate from the RMD location, information adequate to demonstrate that the adult-use Marijuana Establishment location will be maintained secnrely;

iii Steps to be taken by the adult-use Marijuana Establishment to prevent diversion to minors;

iv. Information adequate to demonstrate that the location will not constitute a will not constitute a nuisance as defined by law; and

v. Attestation that community members were permitted to ask questions and receive answers from representatives of the adult-use Marijuana Establishment.

8. The requisite nonrefundable application fee;

9. If physically separate from the RMD location, a description of plans to ensure that the Marijuana Establishment is or will be compliant with local codes, ordinances, and bylaws for the physical address of the Marijuana Establishment which shall include, but not be limited to, the identification of any local licensing requirements for the adult use of marijuana;

10. A plan by the Marijuana Establishment to positively impact areas of disproportionate impact, as defined by the Commission; and

11. Any other information required by the Commission.

(c) Background Check Packet. Prior to an application being considered complete, each RMD Applicant for licensure to operate an adult-use Marijuana Establishment shall submit the following information:

1. The list of individuals in 935 CMR 500.101(2)(b)1.;

2. Information for each individual identified in 935 CMR 500.101(2)(b)1. which shall include:

a. The individual's full legal name and any aliases;

b. The individual's address;

c. The individual's date of birth;

d. An indication of whether the individual is or has been associated with the existing RMD and in what capacity;

e. A photocopy of the individual's driver's license or other government-issued identification card;

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f. A CORI Acknowledgment Form, pursuant to 803 CMR 2.09: *Requirements for Requestors to Request CORI*, provided by the Commission, signed by the individual and notarized; and

g. Authorization to obtain a full set of fingerprints, in accordance with M.G.L. c. 94G, § 21, submitted in a form and manner as determined by the Commission.

(d) Existing RMD licensees shall also submit the following information for individuals listed in 935 CMR 500.101(2)(b)1. who were not previously associated with the existing RMD license:

1. A description and the relevant dates of any criminal action under the laws of the Commonwealth, or another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority, whether for a felony or misdemeanor including, but not limited to, action against any health care facility or facility for providing marijuana for medical or recreational purposes, in which those individuals either owned shares of stock or served as board member, executive, officer, director or member, and which resulted in conviction, or guilty plea, or plea of *nolo contendere*, or admission of sufficient facts;
2. A description and the relevant dates of any civil action under the laws of the Commonwealth, another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority, including, but not limited to a complaint relating to any professional or occupational or fraudulent practices;
3. A description and relevant dates of any past or pending legal or enforcement actions in any other state against any board member, executive, officer, director or member, or against any entity owned or controlled in whole or in part by them, related to the cultivation, processing, distribution, or sale of marijuana for medical or recreational purposes;
4. A description and the relevant dates of any administrative action, including any complaint, order or disciplinary action, by the Commonwealth, or like action by another state, the United States or foreign jurisdiction, or a military, territorial, or Native American tribal authority, including, but not limited to any complaint or issuance of an order relating to the denial, suspension, or revocation of a license, registration, or certification;
5. A description and relevant dates of any administrative action, including any complaint, order or disciplinary action, by the Commonwealth, or a like action by another state, the United States or foreign jurisdiction, or a military, territorial, Native American tribal authority or foreign jurisdiction, with regard to any professional license, registration, or certification, held by any board member, executive, officer, director, or member that is part of the applicant's application, if any;
6. A description and relevant dates of actions against a license to prescribe or distribute controlled substances or legend drugs held by any board member, executive, officer, director or member that is part of the applicant's application, if any; and
7. Any other information required by the Commission.

(e) Management and Operations Profile Packet. To be considered for licensure as an adult-use Marijuana Establishment, each existing RMD Applicant shall submit the following information:

1. Detailed information regarding its business registration with the Commonwealth, including the legal name, a copy of the articles of organization and bylaws;
2. A certificate of good standing from the Corporations Division of the Secretary of the Commonwealth;
3. A certificate of good standing or certificate of tax compliance from the DOR;
4. The applicant's plan for separating medical and recreational operations, including:
   a. Where operations are colocated, the applicant's plan shall include a component detailing the manner in which the applicant will ensure that operations remain separate at the point of sale; and
   b. Where operations are colocated, the applicant's plan shall include a component detailing the manner in which Medical and Adult Use operations will be kept separate, including a plan to ensure that access to the Adult Use operation is restricted to those individuals 21 years of age or older;

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5. A proposed timeline for achieving operation of the Marijuana Establishment and evidence that the establishment will be ready to operate within the proposed timeline after notification by the Commission that the applicant qualifies for licensure;
6. A description of the Marijuana Establishment's plan to obtain a liability insurance policy or otherwise meet the requirements of 935 CMR 500.105(10);
7. A detailed summary of the business plan for the adult-use Marijuana Establishment;
8. A detailed summary describing or, where colocated with the existing RMD, updating or modifying operating policies and procedures for an adult-use Marijuana Establishment which shall include, but not be limited to:
   a. Security;
   b. Prevention of diversion;
   c. Storage of marijuana;
   d. Transportation of marijuana;
   e. Inventory procedures;
   f. Procedures for quality control and testing of product for potential contaminants;
   g. Dispensing procedures;
   h. Personnel policies, including background check policies;
   i. Record-keeping procedures;
   j. Procedures for the maintenance of financial records; and
   k. Diversity plans to promote equity among minorities, women, veterans, people with disabilities, and people of all gender identities and sexual orientations in the operation of the Marijuana Establishment.
9. A detailed description of qualifications and intended training(s) for marijuana establishment agents who will be employees;
10. The Management and Operation Profile submitted in accordance with this subsection shall demonstrate compliance with the operational requirements set forth in 935 CMR 500.105 to 500.140, as applicable;
11. Any other information required by the Commission.

(f) Additional License Requirements.

1. In addition to the requirements set forth in 935 CMR 500.101(2)(e), applicants for a license to operate a Marijuana Establishment for retail shall also provide, as part of the Management and Operation Profile packet, a detailed description of the Marijuana Establishment's proposed plan for obtaining marijuana products from a licensed Marijuana Cultivator;
2. In addition to the requirements set forth in 935 CMR 500.101(2)(e), applicants for a license to operate Marijuana Establishment for cultivation shall also provide as part of the Management and Operation Profile packet an operational plan for the cultivation of marijuana, including a detailed summary of the policies and procedures for cultivation.
3. In addition to the requirements set forth in 935 CMR 500.101(2)(e), applicants for a license to operate Marijuana Establishment for product manufacturing shall also provide as part of the Management and Operation Profile packet:
   a. A description of the types and forms of marijuana products that the Marijuana Establishment intends to produce;
   b. The methods of production; and
   c. A sample of any unique identifying mark that will appear on any product.
4. In addition to the requirements set forth in 935 CMR 500.101(2)(e), applicants for a license to operate a Marijuana Establishment as a microbusiness shall also provide as part of the application of intent evidence of residency within the Commonwealth for a period of 12 consecutive months prior to the date of application.
5. In addition to the requirements set forth in 935 CMR 500.101(2)(e), applicants for a license to operate a Marijuana Establishment as a Craft Marijuana Cooperative shall also provide as part of the application of intent:
   a. Evidence of residency within the Commonwealth for a period of 12 consecutive months prior to the date of application;
   b. Evidence of the cooperative's organization as a limited liability company or limited liability partnership, or a cooperative corporation under the laws of the Commonwealth;

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c. Evidence that one member has filed a Schedule F tax income form within the past five years; and;
d. Evidence that the cooperative is organized to operate consistently with the Seven Cooperative Principles established by the International Cooperative Alliance in 1995.

500.102: Action on Applications

(1) Action on Each Packet. The Commission shall grant licenses with the goal of ensuring that the needs of the Commonwealth are met with regard to access, quality, and community safety.
(a) Packets comprising the license application shall be evaluated based on the Applicant's:
1. demonstrated compliance with the laws and regulations of the Commonwealth;
2. suitability for licensure based on the provisions of 935 CMR 500.101(1), 935 CMR 500.800 and 935 CMR 500.801;
3. evaluation of the thoroughness of the applicants' responses to the required criteria. The Commission shall consider each packet submitted by an applicant on a rolling basis.
(b) The Commission shall notify each applicant in writing that:
1. the applicant qualifies as an Economic Empowerment Applicant pursuant to the criteria set forth in 935 CMR 500.101(1)(e), where applicable, and may be eligible for assistance through the Social Equity Program established in 935 CMR 500.105(17);
2. the applicant has completed a packet; or
3. the Commission requires further information within a specified period of time before the packet is determined to be complete.
(c) Failure of the applicant to adequately address all required items in its application in the time required under 935 CMR 500.102 by the Commission will result in evaluation of the application as submitted. Nothing in 935 CMR 500.100 is intended to confer a property or other right or interest entitling an applicant to a meeting before an application may be denied.
(d) Upon determination that the application is complete, a copy of the completed application, to the extent permitted by law, will be forwarded to the municipality in which the Marijuana Establishment will be located. The Commission shall request that the municipality respond within 60 days of the date of the correspondence that the applicant's proposed Marijuana Establishment is in compliance with municipal bylaws or ordinances.

(2) Action on Completed Applications.
(a) Priority application review will be granted to:
1. Applicants who are certified as eligible for the Economic Empowerment Program, as defined in 935 CMR 500.101(1)(e); and
2. Existing RMD Applicants as defined in 935 CMR 500.101(2)(a).
(b) The Commission shall review applications from priority applicants on an alternating basis, beginning with the first-in-time-application received from either an RMD Applicant or Economic Empowerment Applicant as recorded by the Commission's electronic license application tracking system. Where no completed application is available for review by the Commission from either of the priority groups defined in 935 CMR 500.102(2)(a), the Commission shall review the next complete application from either group.
(c) The Commission shall grant or deny a provisional license not later than 90 days following notification to the applicant that all required packets are considered complete. Applicants shall be notified in writing that:
1. the applicant shall receive a provisional license which may be subject to further conditions as determined by the Commission; or
2. the applicant has been denied a license. Denial shall include a statement of the reasons for the denial.
(d) Failure of the applicant to complete the application process within the time specified by the Commission in the application instructions shall be grounds for denial of a license.

500.103: Licensure and Renewal

(1) Provisional License. Upon selection by the Commission, an applicant shall submit the required license fee and subsequently be issued a provisional license to develop a Marijuana Establishment, in the name of the entity. Such provisional license shall be subject to reasonable conditions specified by the Commission, if any.

Chapter 230. Zoning

Article III. Principal Use Regulations

§ 230-3.4. Classification of governmental, institutional and public uses.

A. Municipal use: use of land, buildings and structures by the Town of Mansfield.

B. Educational: use of land, buildings and structures for providing learning in a general range of subjects on land owned or leased by the commonwealth or any of its agencies, subdivisions of bodies politic, or by a nonprofit educational entity. Such use may include athletic facilities, dormitories, administrative offices and similar facilities and activities whose purpose is substantially related to furthering learning.

C. Religious: use of land, buildings and structures for religious purposes by a recognized religious sect or denomination, which may include religious instruction, maintenance of a convent, parish house and similar facilities and activities whose purpose is substantially related to furthering the beliefs of such sect or denomination.

D. Philanthropic: charitable or nonprofit library, museum, art gallery, theatrical entertainment center or other similar use.

E. Day-care center: use of land, buildings and structures for a nursery school or similar facility for the day care of children or adults and duly licensed by the Commonwealth of Massachusetts.

F. Hospital and nursing home: hospital, community health center, sanitarium, nursing, rest or convalescent home.

G. Community life care center: a campus-type development of multiple facilities and buildings to provide a continuum of residential alternatives for the aged, chronically ill or disabled; with the particular goal of assisting them to better cope with their particular limitations and to lead a productive existence, through the provision of appropriate care, rehabilitation, psychological counseling, and educational programs. Such a development may include any combination of the following, but must include a skilled nursing facility and either an assisted-living facility or an independent-living facility as defined in Subsection **G(1)**, **(2)** and **(3)**:

(1) A skilled nursing facility including ancillary support and rehabilitation services, including but not limited to: an adult day care or respite facility to provide short-term custodial care to individuals with special needs; food services; social, psychological, and educational programs; twenty-four-hour supervision; and nursing care as appropriate, all with the purpose of assisting the individual to continue to develop and to overcome the limitations imposed by their condition, and providing the individual's family or other caregiver a respite from the provision of such care;

(2) A congregate housing or assisted-living facility, providing a sheltered living environment for the aged, chronically ill, or disabled, including such services as housekeeping; cooking and

common dining; social, psychological, and educational programs; assistance with personal needs; and crisis intervention, all with the purpose of assisting each resident to continue to develop and to lead a productive and fulfilling life;

(3) Independent-living facilities providing private living and dining accommodations to persons, 55 years of age or older, also including common areas and the provision of social, psychological, and educational programs and crisis intervention as needed, all with the purpose of providing an environment in which older persons can continue to derive the personal and psychological benefits of independent living while also enjoying the substantial social and educational benefits of community living;

(4) Home health-care facilities serving as a base for the provision of medical, nutritional, social, psychological and educational services for the aged, chronically ill, or disabled;

(5) Multipurpose facilities for resident and nonresident senior citizens, which may include social, educational, wellness, counseling, recreational, outreach, and other activities;

(6) Facilities for the provision of ancillary services to residents of the development, which may include, but are not limited to, a beauty parlor/barber shop, convenience store, ice cream parlor, bank, exercise center, and other such services, provided that such services shall be available only to residents, their guests, and employees and not to members of the general public.

H. Public service utility: the use of land, buildings and structures by a public service corporation, provided that in the residence districts the use is essential to the service of the residential area in which it is located.

I. Aviation: activities including and related to the operation of a general aviation airport for the cooperation, fueling, maintenance and storage of aircraft.

J. Temporary use.

(1) A use permitted by right in all districts in this bylaw lasting a limited amount of time. For the purposes of this bylaw, a "limited amount of time" shall mean no more than 10 consecutive days and a total of not more than 10 days within any given calendar year. Temporary uses shall be limited to the following: temporary noncommercial fair, festival, auction, or flea market. All temporary uses shall be strictly limited to usual and customary not-for-profit, fraternal, or charitable organizations.

(2) The Mansfield Select Board may issue a special permit to extend a temporary use beyond 10 days if said use conforms with this section.

(3) The Select Board, acting as special permit granting authority, may authorize by special permit in accordance with § 230-5.5, Special permits, of the Zoning Bylaw, a temporary use in the I-1 Zoning District to be conducted by a Mansfield nonprofit organization for up to an additional one time per permit 45 consecutive days beyond the 10 consecutive days allowed in this section, provided that the such special permit for additional days may only be granted in conjunction with the grant of an entertainment or festival license by the Select Board members under MGL c. 140. Such a special permit shall be issued only to the Mansfield nonprofit organization conducting the temporary use, is nontransferable, and does not revert to or run with the title of the land upon which such a temporary use is conducted. For the purposes of this subsection, a "Mansfield nonprofit organization" is defined as a not-for-profit, fraternal or charitable organization based in Mansfield and whose primary purpose is to provide cultural, social, educational, religious or recreational opportunities for Mansfield residents.

K. Registered nonprofit medical marijuana dispensary special permit.

(1) Purpose:

(a) To protect the health, safety, convenience and general welfare of the inhabitants of the Town of Mansfield;

(b) To minimize congestion in the streets and prevent blight;

(c) To protect and conserve the value of property within the Town;

(d) To encourage the most appropriate use of land throughout the Town;

(e) To guide development consistent with the Town's Master Plan; and

(f) To prevent crime and delinquency of children.

(2) Definitions.

REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY
As defined in § **230-1.5.**

(3) Applicability.

(a) The Planning Board shall be the special permit granting authority for all registered nonprofit medical marijuana dispensary special permit applications.

(b) The Planning Board may grant a special permit for a registered nonprofit medical marijuana dispensary only in the following zoning district: Planned Business District. Registered nonprofit medical marijuana dispensaries shall be prohibited in all other zoning districts.

(c) All registered nonprofit medical marijuana dispensary special permit applications shall satisfy the applications, fees, plans, and information requirements identified in § **230-5.5**, Special permits, of this Zoning Bylaw. In addition, all registered nonprofit medical marijuana dispensary special permit applications shall include proof of registration with the Massachusetts Department of Public Health under the provisions of Chapter 369 of the Acts of 2012 and 105 CMR 725.100.

(d) Application for a special permit shall be filed by the petitioner with the Town Clerk and the Planning Board. Notice of public hearing shall be given in accordance with MGL c. 40A, § 11. The public hearing shall be held within 65 days from the date of filing said application. The decision of the Planning Board shall be made within 90 days of the public hearing, and the decision may be extended by written agreement between the petitioner and the Planning Board. A copy of the agreement shall be filed with the Town Clerk.

(4) Special permit considerations.

(a) Special permits granted under the provisions of this bylaw are nontransferable. All registered nonprofit medical marijuana dispensary special permits may be granted for a term not to exceed two years, which may be automatically renewed. In deciding whether to renew a special permit for a registered nonprofit medical marijuana dispensary, the special permit granting authority may consider whether any complaints have been filed with the Town based upon alleged violations of the standards set forth in Subsection K(4)(c) of this bylaw or upon alleged violation of the conditions of the special permit.

(b) Special permits granted under this section shall lapse within two years unless substantial use of the permit is made or construction has commenced.

(c) In considering a special permit application, the Planning Board shall take the following into consideration:

[1] Impact on the health, safety, convenience, general welfare and amenities of the inhabitants of the Town;

[2] Effects on adjoining premises, neighborhood character and property values;

[3] Vehicular and pedestrian traffic convenience, safety, and adequacy, including an assessment of movement within the site and in relation to adjacent streets, properties, or improvements;

[4] Adequacy of municipal facilities and services, including, but not limited to, fire and police protection, water provision, and wastewater disposal;

[5] Effects on the natural environment.

(d) No special permit shall be issued for a registered nonprofit medical marijuana dispensary use unless the use conforms to the following minimum setback (distance) requirements.* [*All measurements are to and from parcel limits (lot lines).]

[1] Residential zone: 1,000 feet.

[2] Residential use: 1,000 feet.

[3] Public/Private schools: 1,200 feet.

[4] Day-care center: 1,200 feet.

(e) No special permit shall be approved until the special permit granting authority has determined that the application and plans meet all the applicable submission and technical requirements of this bylaw and that the benefits of the proposed project outweigh its detrimental effects after consideration of all the criteria of Subsection K**(4)(c)** of this section and § **230-5.5** of this bylaw.

(f) No special permit shall be approved until the applicant has provided the special permit granting authority with proof that the proposed registered nonprofit medical marijuana dispensary has been registered with the Massachusetts Department of Public Health under the provisions of Chapter 369 of the Acts of 2012 and 105 CMR 725.100.

L. [1]Recreational marijuana cultivation special permit.

[Added 4-10-2018 ATM by Art. 29[2]]

(1) Purpose.

(a) Cultivation of recreational marijuana may be allowed by special permit granted by the Planning Board in the Planned Business District Marijuana Cultivation Overlay District, further described as follows and shown on a map titled "Southwest PBD Cultivation Overlay District," dated February 16, 2018.[3] No other type of marijuana establishment may be allowed in the Planned Business District Marijuana Cultivation Overlay District.

[3] *Editor's Note: Said map is included as an attachment to this chapter.*

(b) The purpose of this bylaw is to establish a local process for the locating, permitting and regulation of the use and distribution of marijuana not medically prescribed, in accordance with MGL c. 64N and MGL c. 94G; to protect the health, safety and general welfare of the inhabitants of the Town of Mansfield; and to properly locate the subject use in order that the use has the minimal possible exposure to Mansfield's children and impact on housing values, and to provide a destination location that is least disruptive to

Mansfield's residential neighborhoods, schools, commercial areas and downtown business districts.

(c) In accordance with MGL c. 94G, § 3, Local control, the Town of Mansfield, having one medical marijuana facility, hereby limits the number of recreational marijuana cultivators to one establishment.

(2) Definitions.

CANOPY
That aboveground portion of the marijuana plant that forms the uppermost layer, or crown, of the plant.

CONSUMER
A person who is at least 21 years of age.

MARIJUANA
All parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in Section 1 of Chapter 94C of the General Laws.

MARIJUANA CULTIVATOR
A marijuana cultivator may cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

(a) Tier 1: up to 1,000 square feet of canopy;

(b) Tier 2: 1,001 to 5,000 square feet of canopy;

(c) Tier 3: 5,001 to 10,000 square feet of canopy;

(d) Tier 4: 10,001 and over square feet of canopy.

MARIJUANA ESTABLISHMENT
A marijuana cultivator, marijuana testing facility, marijuana product manufacturer or any other type of licensed marijuana-related growing, process or concentrating facility. For the purposes of this bylaw, marijuana establishments are strictly prohibited.

MARIJUANA PRODUCTS
Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

MARIJUANA RETAILER
An entity licensed to purchase and deliver marijuana and marijuana products to deliver, sell or otherwise transfer marijuana to consumers. A marijuana retailer may only be allowed by special permit.

(3) Applicability.

(a) All marijuana cultivator operations shall be prohibited in Mansfield except such operations as may be allowed by special permit in the Southwest PBD Cultivation Overlay District. Such prohibition shall not be construed to prohibit transportation of marijuana or marijuana products as may be allowed by law, subject to any bylaw, special permit or permit requirement.

(b) The Planning Board shall be the special permit granting authority for all recreational marijuana cultivation applications.

(c) The special permit granting authority may only grant a special permit for a recreational marijuana cultivation application within the Planned Business District Marijuana Cultivation Overlay District.

(d) In no case shall the number of recreational marijuana cultivators exceed the number of licensed medical marijuana dispensaries within the Town of Mansfield.

(e) All recreational marijuana cultivator special permit applications shall provide all applications, fees, plans, and information identified in § **230-5.5**, Special permits, of this Zoning Bylaw.

(f) Application for a special permit shall be filed by the petitioner with the Town Clerk and the special permit granting authority. Notice of public hearing shall be given in accordance with MGL c. 40A, § 11. Public hearing shall be held within 65 days from the date of filing said application. The decision of the special permit granting authority shall be made within 90 days of the public hearing, and decision may be extended by written agreement between the petitioner and the special permit granting authority. A copy of the agreement shall be filed with the Town Clerk.

(4) Special permit consideration.

(a) No special permit shall be issued to any person convicted of violating the provisions of MGL c. 119, § 63 or MGL c. 272, § 28. Special permits granted under the provisions of this bylaw are nontransferable. All recreational marijuana cultivator special permits may be granted for a term not to exceed five years, which may be renewed, unless complaints are filed based upon violations of the standards set forth in this section. In the event of complaints, the special permit granting authority shall hold a public hearing to hear said complaints before considering renewal of the special permit.

(b) Special permits granted under this section shall lapse within three years if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

(c) In considering a special permit application, the special permit granting authority shall take the following into consideration:

[1] Impact on the health, safety, convenience, general welfare and amenities of the inhabitants of the Town;

[2] Effects on adjoining premises, neighborhood character, social structure, and community values and standards;

[3] Vehicular and pedestrian traffic convenience, safety, and adequacy, including an assessment of movement within the site and in relation to adjacent streets, properties, or improvements;

[4] Adequacy of municipal facilities and services, including but not limited to, fire and police protection, water provision, and wastewater disposal;

[5] Effects on the natural environment; and

[6] Fiscal impacts, including effect on the tax and employment base, municipal finances, and property values.

(d) In addition, the special permit granting authority shall take the following into consideration:

[1] The premises have been designed to be compatible with other buildings in the area and to mitigate any adverse visual or design impacts that might result from required security measures and restrictions on visibility into the building's interior;

[2] The premises provides a secure indoor waiting area for individuals and clients;

[3] Traffic generated by client trips, employee trips, deliveries to and from the premises, and parking and queuing especially during peak periods, shall not create a substantial adverse impact on nearby residential uses.

[4] No special permit shall be issued for a recreational marijuana cultivator use unless the use(s) conforms to the following minimum setback (distance) requirements.

Use	Minimum Setback[1] (feet)
Public/private schools	500
Day-care center	500

NOTE:

1 All measurements are to and from parcel limits (lot lines).

[5] No special permit shall be approved until the special permit granting authority has determined that the application and plans meet all the submission and technical requirements of this bylaw and that the benefits of the proposed project outweigh its detrimental effects after consideration of all the criteria of § **230-5.5**, Special permits, and this section, Planned Business District Marijuana Cultivation Overlay District, of this bylaw.

(5) Application process.

(a) The application process for a special permit for a recreational marijuana cultivator within the Planned Business District Marijuana Cultivation Overlay District shall comply with all the requirements of § **230-5.5**, Special permits.

(b) Each application shall demonstrate a safe, secure structure and parking area in a nonintrusive manner, in the opinion of the special permit granting authority.

(c) All special permit public hearings shall be conducted in accordance with MGL c. 40A.

(d) Before submitting the application for a recreational marijuana cultivator, the applicant shall schedule an appointment to meet with staff to discuss the procedure for approval of a special permit for the project, including submittal requirements and site standards. At the conclusion of the meeting(s), staff will prepare summary notes/minutes of the meetings for distribution.

(6) Design standards.

(a) All landscaping and screening and exterior lighting shall conform to § **230-4.3** of the Mansfield Zoning Bylaw.

(b) All parking shall conform to § **230-4.4** of the Mansfield Zoning Bylaw.

(c) Signage.

[1] One three-foot-by-five-foot wall sign containing the name of the establishment may be permitted on the exterior wall above the public entrance.

[2] The following types of signage are strictly prohibited:

[a] Internally illuminated signage.

[b] Off-site signage.

[c] Outdoor advertising signs.

[d] A-frame or sandwich board style signs.

[e] Simulated product.

(d) Context map. A map depicting all lots and land uses within a 500-foot radius of the premises.

(7) Special permit conditions. The Planning Board shall impose conditions reasonably appropriate to improve site design, traffic flow, public safety, air quality, and preserve the character of the surrounding area and otherwise serve the purpose of this section. In addition to any specific conditions applicable in the applicant's recreational marijuana cultivator, the Planning Board shall include the following conditions in any special permit under this section:

(a) The permit holder shall provide to the Building Inspector, Police and Fire Departments and the Board of Health the name, telephone number and electronic mail address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.

(b) The designated contact person(s) shall notify in writing the Police and Fire Departments, Building Inspector, Board of Health and the Planning Board within a minimum of 12 hours following a violation, potential violation, or any attempts to violate any applicable law, or any criminal, potential criminal, or attempted criminal activities as a recreational marijuana cultivator under this section.

(c) The special permit shall lapse within five years of its issuance. If the permit holder wishes to renew the special permit, an application to renew the special permit must be submitted at least 120 days prior to the expiration of the special permit.

(d) The design of the building, facade and signage shall be constructed exactly as approved by the Planning Board. Any deviations from the approved plan shall be approved by the Planning Board or the special permit shall be void.

(e) The special permit shall be limited to the current applicant and shall lapse if the permit holder ceases operating the marijuana establishment.

(f) Any marijuana establishment that the Planning Board determines has become a public nuisance due to odor or continuous or excessive queuing outside the establishment may be found in violation of the special permit.

(8) Prohibited uses.

(a) No person shall use or consume, or attempt to use or consume any marijuana product as defined herein, in or upon any public place or place to which the public has a right of access as invitees or licensees, including, but not limited to all public ways, roads, sidewalks, parking lots, parks and commons, Town-owned open space or land owned by or managed by the Conservation Commission, cemeteries, municipal buildings and the grounds appurtenant thereto, and schools and the grounds and athletic fields appurtenant thereto and which shall include any motor vehicle or bicycle when parked or moving upon any of the aforementioned places or locations. A violation of this bylaw shall be deemed a breach of the peace.

(b) No consumption of purchased product may occur on site or within a vehicle parked on site.

(c) Outdoor marketing events, outdoor promotions or outdoor gatherings or displays are strictly prohibited.

(9) Defrayment of local cost incurred. The special permit granting authority may also establish a written agreement between each recreational marijuana cultivator and the Town of Mansfield that requires payment from the recreational marijuana cultivator for all costs directly and indirectly proportioned and reasonably related to the costs imposed on the Town of Mansfield as a result of the recreational marijuana cultivator conducting business in Mansfield and its impacts on police, fire, health, public education and community values. The Town of Mansfield should document its costs related to the operation of a recreational marijuana cultivator; these documented costs shall be considered a public record.

(10) Severability; conflict with other laws.

(a) To the extent a conflict exists between this bylaw and other bylaws of the Town of Mansfield, the more restrictive provisions shall apply.

(b) If a court of competent jurisdiction holds any provision of this bylaw invalid, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections, or part of any section or sections, of this bylaw shall not affect the validity of the remaining sections or parts of sections or any other bylaws of the Town of Mansfield.

[1] *Editor's Note: Former Subsection L, Recreational marijuana, temporary moratorium, added 4-11-2017 ATM by Art. 28, as amended, was removed as the Town has adopted provisions on the cultivation and sale of recreational marijuana.*

[2] *Editor's Note: This article was approved at a special election held 10-16-2018.*

M. Recreational marijuana manufacturing, independent laboratory testing or research special permit. [Added 4-10-2018 ATM by Art. 30[4]; amended 4-9-2019 ATM by Art. 38]

(1) Purpose.

(a) The manufacturing independent laboratory testing or research of recreational marijuana may be allowed by special permit granted by the Planning Board in the I-2 Zoning District as shown on the existing Town of Mansfield Zoning Map printed July 24, 2018.[5]

[5] *Editor's Note: Said Map is included as an attachment to this chapter.*

(b) The purpose of this bylaw is to establish a local process for the locating, permitting and regulation of marijuana manufacturing, independent laboratory testing or research for marijuana in accordance with MGL c. 64N and MGL c. 94G; to protect the health, safety and general welfare of the inhabitants of the Town of Mansfield; and to properly locate the subject uses in order that the uses have the minimal possible exposure to Mansfield's children and impact on housing values, and to provide a destination location that is consistent with other allowed activities in the I-2 Zoning District.

(2) Definitions.

HOST COMMUNITY
A municipality in which a marijuana establishment is located or in which an applicant has proposed locating an establishment.

INDEPENDENT TESTING LABORATORY
A laboratory that is licensed by the commission and is:

(a) Accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement or that is otherwise approved by the commission;

(b) Independent financially from any medical marijuana treatment center or licensee or marijuana establishment for which it conducts a test; and

(c) Qualified to test marijuana in compliance with regulations promulgated by the commission pursuant to MGL c. 94G.

MANUFACTURE
To compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

MARIJUANA
All parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in MGL c. 94C, § 1, provided that "Marijuana shall not include: (i) The mature stalk of the plant, fiber produced from the stalks, oil, or cake make from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (ii) hemp; or (iii) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products."

MARIJUANA ESTABLISHMENT
A marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, marijuana retailer, independent testing laboratory, marijuana research facility, marijuana transporter, or any other type of licensed marijuana-related business, except a medical marijuana treatment center.

MARIJUANA PRODUCT MANUFACTURER
An entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

MARIJUANA PRODUCTS
Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

MARIJUANA RESEARCH FACILITY
An academic institution, nonprofit corporation or domestic corporation or entity authorized to do business in the Commonwealth of Massachusetts. A marijuana research facility may cultivate, purchase or otherwise acquire marijuana for the purpose of conducting research regarding marijuana and marijuana products. Any research involving humans must be authorized by an institutional review board. A marijuana research facility may not sell marijuana it has cultivated.

MARIJUANA TESTING FACILITY
An entity licensed to test marijuana products, including certification for potency and the presence of contaminants.

(3) Applicability.

(a) Marijuana manufacturing, independent laboratory testing or research shall be permitted by special permit in the I-2 Zoning District.

(b) The Planning Board shall be the special permit granting authority for all marijuana manufacturing independent laboratory testing or research.

(c) A special permit application may be made for one or more of the three uses:

[1] Manufacturing.

[2] Independent laboratory testing.

[3] Research.

(d) The special permit granting authority may only grant a special permit for a use permitted by the bylaw if such use is proposed to be carried out completely within the confines of a building on a lot that has a minimum size of four acres.

(e) All marijuana manufacturing, independent laboratory testing or research special permit applications shall provide all applications, fees, plans, and information identified in § 230-5.5, Special permits, of this zoning bylaw.

(f) Application for a special permit shall be filed by the petitioner with the Town Clerk and the special permit granting authority. Notice of public hearing shall be given in accordance with MGL c. 40A, § 11. Public hearing shall be held within 65 days from the date of filing said application. The decision of the special permit granting authority shall be made within 90 days of the public hearing and decision may be extended by written agreement between the petitioner and the special permit granting authority. A copy of the agreement shall be filed with the Town Clerk.

(4) Special permit consideration.

(a) No special permit shall be issued to any person convicted of violating the provisions of MGL c. 119, § 63, or MGL c. 272, § 28. Special permits granted under the provisions of this bylaw are nontransferable. All recreational marijuana special permits may be granted under this bylaw for a term not to exceed five years, which may be renewed, unless complaints are filed based upon violations of the standards set forth in this section. In the event of complaints, the special permit granting authority shall hold a public hearing to hear said complaints before considering renewal of the special permit.

(b) Special permits granted under this section shall lapse within three years if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

(c) In considering a special permit application, the special permit granting authority shall take the following into consideration:

[1] Impact on the health, safety, convenience, general welfare and amenities of the inhabitants of the Town;

[2] Effects on adjoining premises, neighborhood character, social structure, and community values and standards;

[3] Vehicular and pedestrian traffic convenience, safety, and adequacy, including an assessment of movement within the site and in relation to adjacent streets, properties, or improvements;

[4] Adequacy of municipal facilities and services, including, but not limited to, fire and police protection, water provision and wastewater disposal;

[5] Effects on the natural environment; and

[6] Fiscal impacts, including effect on the tax and employment base, municipal finances, and property values.

(d) In addition, the special permit granting authority shall take the following into consideration:

[1] The premises provide adequate security for the marijuana products that are used in the operation for which the special permit is sought.

[2] Traffic generated by the operation shall be that which is normal and customary for other business operations in the I-2 Zoning District.

[3] Minimum setbacks.

[a] No special permit shall be issued for a marijuana manufacturing, independent laboratory testing or research use unless the use(s) conforms to the following minimum setback (distance) requirements.

Use	Minimum Setback (feet)
Public/private schools	500
Day-care center	500

[b] Such distances shall be measured building to building.

(5) Application process.

(a) The application process for a special permit for a marijuana manufacturing, independent laboratory testing or research facility shall comply with all the requirements of § 230-5.5, Special permits.

(b) Each application shall demonstrate a safe, secure structure and parking area in a nonintrusive manner, in the opinion of the special permit granting authority.

(c) All special permit public hearings shall be conducted in accordance with MGL c. 40A.

(d) Before submitting the application for a marijuana manufacturing independent laboratory testing or research special permit, the applicant shall schedule an appointment to meet with staff to discuss the procedure for approval of a special permit for the project, including submittal requirements and site standards. At the conclusion of the meeting(s), staff will prepare summary notes/minutes of the meetings for distribution.

(6) Design standards.

(a) All landscaping and screening and exterior lighting shall conform to § 230-4.3 of the Mansfield Zoning Bylaw.

(b) All parking shall conform to § 230-4.4 of the Mansfield Zoning Bylaw.

(c) Signage.

[1] One three-foot-by-five-foot wall sign containing the name of the establishment may be permitted on the exterior wall above the public entrance.

[2] The following types of signage are strictly prohibited:

[a] Internally illuminated signage;

[b] Off-site signage;

[c] Outdoor advertising signs;

[d] A-frame or sandwich-board-style signs;

[e] Simulated product;

(d) Context map. A map depicting all lots and land uses within a 500-foot radius of the building that is intended to be used as the building that contains the operation proposed for the special permit.

(7) Special permit conditions. The Planning Board shall impose conditions reasonably appropriate to improve site design, traffic flow, public safety, air quality, and preserve the character of the surrounding area and otherwise serve the purpose of this section. In addition to any specific conditions applicable in the applicant's marijuana manufacturing, independent laboratory testing or research application, the Planning Board shall include the following conditions in any special permit under this section:

(a) The permit holder shall provide to the Building Inspector, Police and Fire Departments and the Board of Health the name, telephone number and electronic mail address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.

(b) The designated contact person(s) shall notify, in writing, the Police and Fire Departments, Building Inspector, Board of Health and the Planning Board within a minimum 12 hours following a violation, potential violation, or any attempts to violate any applicable law, or any criminal, potential criminal, or attempted criminal activities as a marijuana manufacturing, independent laboratory testing or research facility under this section.

(c) The special permit shall lapse within five years of its issuance. If the permit holder wishes to renew the special permit, an application to renew the special permit must be submitted at least 120 days prior to the expiration of the special permit.

(d) The design of any new building, facade or signage shall be constructed exactly as approved by the Planning Board. Any deviations from the approved plan shall be approved by the Planning Board or the special permit shall be void.

(e) The special permit shall be limited to the current applicant and shall lapse if the permit holder ceases operating the marijuana manufacturing, independent laboratory testing or research operation.

(8) Prohibited uses.

(a) No person shall use or consume, or attempt to use or consume, any marijuana product, as defined herein, in or upon any public place or place to which the public has a right of access as invitees or licensees, including, but not limited to, all public ways, roads, sidewalks, parking lots, parks and commons, Town-owned open space or land owned by or managed by the Conservation Commission, cemeteries, municipal buildings and the grounds appurtenant thereto, and schools and the grounds and athletic fields appurtenant thereto and which shall include any motor vehicle or bicycle when parked or moving upon any of the aforementioned places or locations. A violation of this bylaw shall be deemed a breach of the peace.

(b) No consumption of purchased product may occur on site or within a vehicle parked on site.

(c) Outdoor marketing events, outdoor promotions or outdoor gathering or displays are strictly prohibited.

(9) Host community agreement. Pursuant to MGL c. 94G, § 3(d), a marijuana manufacturing, independent laboratory testing or research facility seeking to conduct business in Mansfield shall execute an agreement with the Town of Mansfield that may include a community impact fee; provided, however, that the community impact fee shall be reasonably related to the costs imposed by the Town by the operation of the marijuana manufacturing, independent laboratory testing or research facility and shall not amount to more than 3% of the gross sales of the marijuana manufacturing, independent laboratory testing or research facility or be effective for longer than five years. Any cost to the Town of Mansfield imposed by the operation of a marijuana manufacturing, independent laboratory testing or research facility shall be documented and considered a public record as defined by Massachusetts law.

(10) Severability; conflict with other laws.

(a) To the extent a conflict exists between this bylaw and other bylaws of the Town of Mansfield, the more restrictive provisions shall apply.

(b) If a court of competent jurisdiction holds any provision of this bylaw invalid, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections, or part of any section or sections, of this bylaw shall not affect the validity of the remaining sections or parts of sections or any other bylaws of the Town of Mansfield.

[4] *Editor's Note: This article was approved at a special election held 10-16-2018.*

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure

I, Kimberly M. Saillant, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16 (a)(13) (addendum);
Mass. R. A. P. 16 (e) (references to the record);
Mass. R. A. P. 18 (appendix to the briefs);
Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents); and
Mass. R. A. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced font Courier New at size 12, 10 characters per inch, and contains 29 total non-excluded pages.

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CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on August 10, 2020, I have made service of this Brief and Appendix upon the attorney of record for each party on:

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